

25 FEBRUARY 1947

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1 Tuesday, 25 February 1947

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4 INTERNATIONAL MILITARY TRIBUNAL
5 FOR THE FAR EAST
6 Court House of the Tribunal
7 War Ministry Building
8 Tokyo, Japan

9 The Tribunal met, pursuant to adjournment,
10 at 0930.

11 - - -

12 Appearances:

13 For the Tribunal, same as before.

14 For the Prosecution Section, same as before.

15 For the Defense Section, same as before.

16 - - -

17 The Accused:

18 All present except OKAWA, Shumei, who is
19 represented by his counsel.

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21 (English to Japanese and Japanese
22 to English interpretation was made by the
23 Language Section, IMTFE.)
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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now in
3 session.

4 DR. TAKAYANAGI: Mr. President, Members of
5 the Tribunal: Since yesterday afternoon I have been
6 considering how I could revise my opening statement
7 so as to comply with the requirement laid down by
8 the President, but to my great regret I have found
9 it physically impossible for me to do so, especially
10 as it involves the further process of preparing a
11 Japanese text and its presentation to the Language
12 Section. I must therefore rely now upon the dis-
13 cretion of the Tribunal as to the alternative either
14 to read the typed script, with a few alterations, or
15 to defer it for the moment.

16 Of course, as counsel I obey any order that
17 the Tribunal is pleased to make; however I regard it
18 as a serious dereliction of duty as counsel if I
19 fail to make the following few remarks, so I do
20 desire that the President will bear with me a little
21 while.

22 The defendants on whose behalf I am speak-
23 ing think that the law of the Charter is a momentous
24 element in the present trial; their life and death,
25 their confinement and liberty depends in large
measure upon its interpretations.

1 THE PRESIDENT: Doctor, you can not proceed
2 along those lines. You are attempting to address
3 the Court and you are not entitled to do so. You
4 have prepared, no doubt, a very valuable argument,
5 but we are not allowed to permit you to put that
6 argument at this stage. I say we are not allowed.

7 DR. TAKAYANAGI: May I just --

8 THE PRESIDENT: The Charter sets out the
9 course of procedure.

10 DR. TAKAYANAGI: May I just --

11 THE PRESIDENT: We must follow that course
12 and you must follow it, and please say no more.

13 Mr. Logan.

14 MR. LOGAN: The opening statement, your
15 Honor.

16 THE PRESIDENT: Mr. Cunningham.

17 MR. CUNNINGHAM: If the Tribunal please,
18 before Mr. Logan makes his opening statement I would
19 like to call to the attention of the Tribunal that I
20 would like to object to one part before it is read
21 and ask that it be deleted. I refer to page 6, begin-
22 ning with the word "judicial notice," and ending on
23 the bottom of page 6 with the word "conspirators" --
24 "co-conspirators."
25

I object to this part of the statement for

1 the reason that it is not relevant to the issues in
2 this case and it doesn't forecast any proof which
3 is material to this cause. Neither -- it pertains
4 to the trial -- it pertains to the trial at Nuern-
5 berg, which is not a matter in issue here, and
6 neither is the analogy in fact a question here.

7 I ask the Court to direct counsel to
8 delete that part of his opening statement before he
9 delivers it.

10 THE PRESIDENT: How does it affect your
11 client, Mr. Cunningham?

12 MR. CUNNINGHAM: It asks the Court to take
13 judicial notice that a conspiracy existed in
14 Germany and that the Court distinguish between this
15 case and the case in Nuernberg. My client being
16 ambassador in Germany, it reflects unfavorably, to
17 say the least, upon the association between the two
18 nations, Germany and Japan, and we should not be in
19 a position here where we are re-trying the issues
20 involved in the Nuernberg case. We are only trying
21 the issues involved here.

22 THE PRESIDENT: Mr. Tavenner, you desire
23 to address the Court, I believe.

24 MR. TAVENNER: I have no desire to address
25 the Court on that subject. I do desire, however, to

1 point out to the Tribunal that in the opening state-
2 ment proposed to be made that there are several
3 objections we would like to make to Part II, appear-
4 ing on page 4. This part relates to evidence of
5 the acts and declaration of other nations regarding
6 treaties as creating international law, absence of
7 individual responsibility, diplomatic immunity, and
8 nature of crimes charged.

9 The first objection is that the treatment
10 of this subject offends the ruling of the Court of
11 yesterday regarding matters previously argued.

12 The second and most important objection is
13 that in the first paragraph in particular reference
14 is made to action by other nations in the performance
15 of treaty obligations or in their failure to perform
16 treaty obligations, which could not be issues
17 involved in this trial.

18 THE PRESIDENT: No, we are not trying those
19 nations or any individuals belonging to them.

20 MR. CUNNINGHAM: It would result in a need-
21 less prolongation of this trial should those issues
22 be permitted to be raised in the course of this trial.
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1 THE PRESIDENT: I think one writer on
2 constitutional law, Oppenheim or Lauterpacht, does
3 say or does suggest that the Pact of Paris, I think
4 it is, is not binding because it has been broken
5 by other nations. However, as you say, we are not
6 trying Russia or Britain and they are the nations
7 mentioned in the paragraph to which you object.

8 MR. TAVENNER: If it please the Tribunal, that
9 being our position, we desire to move that that part
10 of the opening statement be deleted.

11 THE PRESIDENT: Are you objecting to the whole
12 of II or just to the first paragraph?

13 MR. TAVENNER: We are objecting to the whole
14 of Section II on the ground that it offends the rule
15 issued yesterday, and we are objecting specifically
16 as to paragraphs 1 and 3 on the second ground mentioned.

17 MR. LOGAN: If the Tribunal please, I might
18 point out that those examples set forth there are not
19 complete. I say, among others, we have other examples
20 that we intend to offer as proof. We don't propose
21 to argue the legality or the admissibility of this
22 evidence at the present time and we don't think that
23 it is within the province of the Tribunal to pass on
24 the materiality or relevancy of our proposed facts
25 that we intend to prove at this time. My understanding

1 is, if the Tribunal please, from past rulings that
2 these opening statements are designed to inform the
3 Tribunal --

4 THE MONITOR: Mr. Logan, operation of the
5 red light is out of order, so will you pause at each
6 sentence please?

7 MR. LOGAN: We do not understand in offering
8 an opening statement that the Tribunal is at that time
9 intending to pass on the relevancy or the materiality
10 of the documents or evidence which we will offer later.
11 We are not so much concerned with the acts set forth
12 in our opening statement, as the acts themselves, as
13 we are with the views taken of those acts by other
14 nations. We think it will be of assistance to the
15 Tribunal to find out how other nations interpreted
16 these very treaties upon which the prosecution is basing
17 its cause of action here. If it is the purpose of the
18 Tribunal to pass on the materiality or relevancy
19 of the evidence we intend to offer, merely on an open-
20 ing statement, I will withdraw the statement. I don't
21 think we have gone beyond the bounds of an opening
22 statement. We set forth, as we view it, very clearly
23 and concisely what we intend to prove, the facts and the
24 evidence that we intend to offer. I don't see anything
25 obnoxious about the statement itself.

1 THE PRESIDENT: You offer that as contemporanea
2 expositio, I suppose, as showing the attitude of the
3 nations to the treaty and thereby getting its correct
4 interpretation from that attitude at the time? Not
5 saying, in effect, if the Japanese were burglars there
6 were other burglars as well? That is not your attitude?

7 MR. LOGAN: Oh, no. Oh, no. We don't contend
8 in either event, your Honor.

9 THE PRESIDENT: Well, you are offering this as
10 bearing on the interpretation --

11 MR. LOGAN: That is right.

12 THE PRESIDENT: -- of the Pact of Paris.

13 MR. LOGAN: If the Tribunal please, you will
14 also note we have there other acts too. These are only
15 some of them as set forth there.

16 THE PRESIDENT: Well, proceed to read what
17 you have written, except that chapter. We will give
18 a decision on that later.

19 MR. LOGAN: If the Tribunal please, if your
20 ruling is intended to restrict our proof I will withdraw
21 the entire statement and we will offer the proof and
22 let the Court rule on it as it is offered, to the
23 materiality and relevancy at that time.

24 I would also like to point out to the Tribunal
25 that when the prosecution read their statements, their

1 opening statements, they were permitted to read them
2 entirely and that after they were read the Tribunal
3 struck out parts of them, which parts we don't know,
4 but they said they would disregard certain parts of
5 them.

6 THE PRESIDENT: You said you would withdraw
7 something, Mr. Logan. What you meant was you would
8 not read it. You have nothing to withdraw. You have
9 not read it.

10 MR. LOGAN: That is right. With all due
11 respect to the Tribunal, we ask that the same ruling
12 be followed with respect to the reading of our opening
13 statements as was followed by the prosecution where they
14 were permitted to read them, even though we did object
15 to them.

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1 THE PRESIDENT: We have not come to any
2 decision yet, Mr. Logan. You have rendered it un-
3 necessary for us to come to a decision. We are not
4 discriminating against you as you suggest, but we
5 must hear argument, of course.

6 MR. LOGAN: If it is the Tribunal's decision
7 that they will not pass upon the materiality or the
8 relevancy of the evidence we intend to offer under
9 Group II, I will omit it and read the balance of the
10 opening statement.

11 THE PRESIDENT: It would be unusual to pass
12 on materiality and relevancy in the course of an
13 opening statement.

14 MR. LOGAN: That is right.

15 THE PRESIDENT: However, you are prepared
16 now to read what you have written except that par-
17 ticular part.

18 MR. LOGAN: With that understanding.

19 Division I of the defense case will pro-
20 duce evidence of a general nature showing that under
21 the existing state of international law the charges
22 in the Indictment must fall; that there was no con-
23 spiracy of the accused inter se, precluding any
24 finding of guilt for the acts and conduct of these
25 accused on the conspiracy counts and that Japan's

1 domestic conditions, coupled with encirclement by
2 the World Powers, forced her as a last resort to
3 fight for her very existence.

4 This evidence will be presented in five
5 parts:

6 I. Evidence of basic documents relating to
7 the surrender, the creation of the Tribunal, treat-
8 ies and the constitutional laws and regulations of
9 Japan.

10 I will omit II.

11 III. Evidence of lack of conspiracy of
12 the accused inter se including the Greater East Asia
13 Co-Prosperity Sphere.

14 IV. Evidence of the national economy of
15 Japan and the encirclement of Japan by the World
16 Powers in the Pacific and Asia.

17 V. Evidence of the Japanese domestic condi-
18 tions from educational, anti-communistic and propa-
19 ganda standpoints.

20 The type of evidence and its subject matter
21 to be produced in support of each of these five
22 parts is as follows:

23 I. EVIDENCE OF BASIC DOCUMENTS RELATING TO THE
24 SURRENDER, THE CREATION OF THE TRIBUNAL,
25 TREATIES AND THE CONSTITUTION, LAWS AND

1 REGULATIONS OF JAPAN.

2 We will read from treaties and basic docu-
3 ments relating to the surrender, the creation and
4 jurisdiction of the Tribunal; treaties which the
5 accused are charged with violating and the Japanese
6 constitution, laws and regulations which the prose-
7 cution introduced into evidence but did not read
8 into the transcript. In addition, the defense will
9 present additional treaties and other basic documents.

10 These treaties, conventions and assurances
11 will make clear in part Japan's position; how and
12 why various actions and countermeasures were taken by
13 her in past years and why she failed to act at times,
14 explaining her position and the position of powerful
15 countries in the family of nations. Her special
16 interests in China and Manchuria will be shown to
17 have been recognized and accepted by World Powers for
18 many years.

19 The interests she was legally charged with
20 protecting, the steps taken on her behalf by some to
21 defend those interests, the misinterpretation of her
22 intentions by some nations, and the recognition of
23 her accomplishments by many nations will be por-
24 trayed.
25

It will be demonstrated that with respect

1 to Manchuria and China, national policies were
2 formed after, not before, the occurrence of those
3 military incidents. Succeeding governments were
4 thus forced to accept conditions as they found them
5 and attempts were made to localize these incidents.

6 III. EVIDENCE OF LACK OF COMMON CONSPIRACY
7 OF THE ACCUSED INTER SE INCLUDING THE
8 GREATER EAST ASIA CO-PROSPERITY SPHERE.

9 The prosecution's charge that these ac-
10 cused conspired to initiate, plan and wage aggres-
11 sive wars; to murder and to mistreat prisoners of
12 war and civilians will be disproven by irrefutable
13 evidence. Further evidence on this, of necessity,
14 will be offered throughout the trial.

15 The evidence to be presented will con-
16 clusively establish that the situation in Japan was
17 entirely different than in Germany. There Hitler
18 and his small group of followers started in 1919
19 and first using the 25 points of the German Labor
20 Party and later in 1925 using "Mein Kampf" as their
21 Bible, with a definite plan in view unaltered
22 throughout, overcame all opposition until they
23 seized control of the Government of Germany and con-
24 tinued in power as its government until the termina-
25 tion of the war.

1 The expressed program of Hitler and his
2 cohorts was adjudged to be ominous including among
3 other points an anti-Jewish provision, planned
4 territorial expansion and premeditated disregard
5 of treaties. It will be shown that no such provi-
6 sions or ones even remotely resembling those were
7 ever a national policy conspired or planned by these
8 accused. Hitler was the dominating factor through-
9 out. Such a personage is absent here. Throughout,
10 he had a close group of followers. Such was not the
11 case here. It will be shown that instead of a com-
12 mon conspiracy in Japan, the converse is true. The
13 military were divided; the Army opposed the Navy;
14 the diplomats disagreed with the Army and the Navy;
15 the Cabinets were divided and fell with great fre-
16 quency; the Diet was independent of governmental
17 policies or influence of the military; military
18 and non-military governmental officials often vio-
19 lently disagreed with one another and some stayed in
20 office whenever possible to fight with vigor for what
21 they thought was right even though their opinions
22 did not always prevail -- the latter a commendable
23 deed, and lauded by representatives of the prosecut-
24 ing powers. It will be shown that these accused were
25 never close enough to one another in time of holding

1 office to form or continue any common plan or
2 conspiracy for the purpose of expanding the power
3 of Japan by aggressive war. Internal dissension in
4 Japan precluded the formation or execution of any
5 common conspiracy or plan as charged.

6 Furthermore, it will be shown that the compo-
7 sition of the cabinets of the Government of Japan was
8 a continuously changing constituency. Since 1928,
9 fifteen different cabinets rose and fell in Japan.
10 Cabinets fell because of crises brought about by
11 various events and differences of opinion between
12 some of these very accused and between them and other
13 officials. No two cabinets fell because of identical
14 reasons.

15 Many of them fell because of purely domestic
16 reasons, unrelated to any international situation.
17 Among the reasons for their termination are the
18 following: The TANAKA Cabinet fell on July 1, 1929
19 because of internal dissension in the cabinet. The
20 HAMAGUCHI Cabinet's fall on April 13, 1931 was due
21 to the illness of the Prime Minister. The 2nd
22 WAKATSUKI Cabinet fell on December 12, 1931 because
23 of a difference of opinion between WAKATSUKI and
24 ADACHI, Minister of Home Affairs, with regard to
25 whether or not the Cabinet should be a coalition form

1 of government. The INUKAI Cabinet fell on May 25,
2 1932 when INUKAI was assassinated by some young
3 officers over a domestic political issue. The SAITO
4 Cabinet fell on July 7, 1934 because of a public
5 scandal which compromised some of the ministers and
6 high officers of the government. The OKADA Cabinet's
7 fall on March 8, 1936 was the result of the February
8 26th Incident. The fall of the HIROTA Cabinet on
9 February 1, 1937 was occasioned by a difference of
10 opinion between HIROTA and TERAUCHI, Minister of War,
11 on the issue of whether the House of Representatives
12 should be dissolved. The HAYASHI Cabinet fell on
13 June 3, 1937 when HAYASHI dissolved the Diet. The
14 new Diet which was elected was opposed in HAYASHI's
15 domestic policies. The 1st KONOYE Cabinet fell on
16 January 4th, 1939 due to a difference of opinion
17 among Cabinet members with regard to the anti-Comin-
18 tern Pact. The HIRANUMA Cabinet's fall on August
19 29th, 1939 was due to internal dissension and the
20 sudden and unexpected conclusion of the non-aggres-
21 sion pact between Germany and Russia. The ABE
22 Cabinet fell on January 15, 1940 because of the
23 domestic price commodity policy and the question of
24 whether or not the Trade Ministry should be estab-
25 lished. The YONAI Cabinet fell on July 21, 1940 be-

1 cause of differences of opinion concerning the
2 formation of a new political party. The 2nd KONOYE
3 Cabinet's fall on July 17, 1941 was brought about
4 by KONOYE's difference of opinion with MATSUOKA,
5 Minister of Foreign Affairs, as to foreign negotia-
6 tions. The 3rd KONOYE Cabinet fell on October 16,
7 1941 because of KONOYE's differences with TOJO with
8 respect to American policy. The TOJO Cabinet fell
9 on July 17, 1944 because of the trend of the war.
10 The KOISO Cabinet's fall on April 7, 1945 was due
11 to a difference of opinion with the Army. The
12 SUZUKI Cabinet's fall on August 16, 1945 came upon
13 the completion of its duty in connection with the
14 surrender. The HIGASHIKUNI Cabinet fell on October
15 6, 1945 because of post war conditions.
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1 Unlike Hitler, no one in Japan was in a con-
2 tinuous position of control in these cabinets or in
3 the military during the period of time covered in the
4 Indictment. In three of these cabinets -- the TANAKA
5 Cabinet April 20, 1927 to July 1, 1929; the HAMAGUCHI
6 Cabinet, July 2, 1929 to April 13, 1931, and the
7 HAYASHI Cabinet, February 2, 1937 to June 3, 1937 --
8 not one of the accused was in a position to control,
9 lead or direct any conspiracy as not one of them was
10 even a member of these cabinets, nor was any of them
11 Chief of the Army General Staff or Navy General Staff
12 during those times.

13 That there could not have been a continuing
14 common conspiracy to initiate or wage aggressive war
15 will be shown by the fact that not one of the accused
16 was a member of any two of the cabinets which were
17 in office at the time of the outbreak of the Manchurian
18 in September, 1931, the commencement of the China
19 Affair in July, 1937, and the outbreak of the Pacific
20 War in December, 1941. Only one accused was in the
21 cabinet at the time of the commencement of the
22 Manchurian Incident and none was Chief of the Army or
23 Navy General Staff. Only two were in the cabinet at
24 the time of commencement of the China Incident and
25 none was Chief of the Army or Navy General Staff. Only

1 four were in the cabinet at the time of Pearl Harbor
2 and the Chief of Naval General Staff was a former
3 accused. The evidence will show that the alleged con-
4 spiracy had no core due to the absence of a leader who
5 would necessarily appear in a position of dominant
6 control in at least two out of these three significant
7 and important periods of time -- that situation is
8 absent. During the entire period of time covered in
9 the Indictment the national policy constantly changed,
10 thus disproving a common continuous conspiracy.

11 Furthermore, it will be significantly demon-
12 strated by evidence that with respect to the charge of
13 conspiracy to plan aggressive wars, where ample time
14 is necessary to make preparations, none of the accused
15 was in the HAMAGUCHI Cabinet which fell five months
16 before the commencement of the Manchurian Incident nor
17 was any of them Chief of the Army or Navy General Staffs
18 during the time of that cabinet. Likewise none of the
19 accused was in the HAYASHI Cabinet which fell one
20 month before the commencement of the China Incident
21 nor was any of them Chief of the Army or Navy General
22 Staff during that time.

23 There was an absence of any agreement what-
24 soever among the accused even remotely pointing to
25 any common plan or conspiracy. The evidence will show

1 that true to sound principles of constitutional
2 government, there was no planning, scheming or
3 plotting to propose a new Prime Minister who would
4 further any such common plan or conspiracy as is
5 charged, or any other common conspiracy at all. The
6 reasons why these cabinets fell and new ones rose will
7 definitely establish that no such common conspiracy
8 among these accused existed.

9 The evidence will further show that among
10 the accused during the period charged in the Indict-
11 ment there was never any single group of them in a
12 position of power and influence over any extended
13 period of time. The absence of such a group holding
14 important political offices or military posts of
15 control prevented any cooperation to carry out any
16 plan or plans for any common conspiracy or purpose
17 as charged in the Indictment during the terms of office
18 held by these accused.

19 Individually it will be shown that they acted
20 in no way different than would be expected or normally
21 anticipated of the officials of any other country under
22 similar circumstances. Evidence will be produced to
23 show that the prosecution by the use of certain labels
24 has magnified, distorted and misconstrued the true
25 meaning and intent of the innocuous phrases -- New

1 Order in East Asia, Hakko Ichiu and Greater East Asia
2 Co-Prosperity Sphere. It will be shown, contrary to
3 the prosecution contention, that these phrases had no
4 malicious or criminal implication and did not contem-
5 plate military aggression; that they are just as
6 innocent and innocuous as the phrases or implications
7 contained within the "Good Neighbor Policy" and "endell
8 Wilkie's "One World."

9 The prosecution's charge that all these
10 accused and others were part and parcel of a common
11 plan or conspiracy to cause cabinets to fall and pre-
12 vent cabinets from being formed is contrary to the facts.
13 Its contention is based on the assumption that the
14 accused conspired to and used the Imperial Ordinance
15 of 1905, as amended in 1912, and the Imperial Ordinance
16 of 1936 for this purpose.

17 Military influence for individual rather
18 than political reasons occasionally played a part in
19 the selection of a new Prime Minister, but it was not
20 pursuant to any organized common plan or conspiracy
21 by these accused. It will be shown with respect to
22 this there never was, or could be any such a common
23 conspiracy among all these accused, due in part to the
24 fact they held different offices at various periods
25 of time. Some at various times expressed different

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1 and to a greater extent than many other countries,
2 the true economic condition will be shown by impartial
3 studies and reports. The economic condition of various
4 basic industries such as shipping, coal, food, tex-
5 tiles, rubber, oil, electricity, etc., will be offered
6 to demonstrate positively that there was no economic
7 preparation for war or any conspiracy in regard there-
8 to. The enactment in 1932 of a Capital Flight Pre-
9 vention Law and in 1933 of Foreign Exchange Control
10 Legislation were natural phenomena forced on Japan
11 by the world wide depression and dislocation of
12 foreign trade which was particularly acute in Japan
13 because of progressively higher tariff walls and other
14 trade barriers erected against her throughout most of
15 the world.

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17 Moreover, we will show that between 1928 and
18 1935 the vast majority of the trading nations of the
19 world enacted identical or similar legislation and
20 that such legislation as Japan enacted had no relation
21 whatsoever to preparations by Japan for war. Japan,
22 being a nation which must import in large quantities
23 in order to live, was particularly injured in her
24 foreign trade by the Ottawa Conference decision of
25 1932 to grant Empire preference in tariff treatment,
a decision which was roundly condemned by the United

1 States and practically every trading nation in the
2 world outside of the United Kingdom. The evidence
3 relating to the economics of Japan including Korea,
4 will show persuasively the absence of any manipula-
5 tion, regimentation or control for any such purpose as
6 is alleged by the prosecution. We will show that prior
7 to the Pacific War, 80 per cent of the foreign trade
8 of Japan was conducted with the United Kingdom,
9 Netherlands and the United States. From this the
10 Tribunal will be able to gauge the terrific impact
11 of the embargo and freezing regulations of the ABCD
12 bloc upon the economy of Japan particularly with
13 respect to the imminent threat it offered in attempt-
14 ing to force a capitulation in China.

15 The evidence will indicate the economic
16 encirclement to which Japan was subjected. The
17 situation in Japan and the disastrous result of such
18 restrictions and sanctions on Japanese economy will
19 be shown. The evidence will further point to the
20 lack of any economic aggression preparatory to waging
21 any alleged aggressive wars by these accused or any
22 conspiracy by them in regard thereto. It will also
23 be shown by maps and charts how Japan had been gradu-
24 ally encircled economically and territorially by
25 world powers leading up to a critical situation.

1 V. Evidence of the Japanese Domestic Con-
2 ditions from Educational, Anti-Communist and
3 Propaganda Standpoint.

4 Evidence will be introduced to show that
5 the prosecution has exaggerated the importance of
6 military education in the Japanese school system.
7 Military education as practiced in Japan was less
8 objectionable than that of other prosecuting nations.
9 This evidence will be presented in the form of
10 curricula, statements and testimony.

11 It will be shown that there was no common
12 conspiracy among those accused to prepare the children
13 of Japan for alleged aggressive wars by training,
14 drills, maneuvers or exercises, using the school
15 system as a nefarious vehicle. There were no text-
16 books devised or used for such purposes. Teachers
17 and educators were never indoctrinated with any
18 militaristic or ultra-nationalistic philosophy or
19 required to teach such ideas in support of any such
20 alleged plan, scheme or common conspiracy. The
21 evidence will further show that military education
22 played only a minor part in the Japanese school system
23 since 1902; that it was never intended to, nor did it
24 dominate school life, or teachings of the children.
25 Furthermore, it will be shown that in 1929 when the

1 military budget of Japan was cut, and the size of the
2 Army reduced, an election was offered to the students
3 of military instruction in the schools or limited
4 service in the Army after graduation.
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1 It will be shown that even when Japan was
2 engaged in hostilities with China, commencing in 1937,
3 her universities were not turned into military schools
4 as claimed, which has been the practice of other nations
5 during times of war. There never was any common
6 conspiracy among these accused to regiment the youth
7 of Japan through the school system and to inculcate
8 them with a spirit of totalitarianism or aggression.

9 The Peace Preservation Law was enacted and
10 enforced for the purpose of combating the rightists
11 and the menace of Communism. It will be shown that
12 the effect of the three Russian five-year plans, the
13 resolutions of the 7th Conference of the Internationale
14 in 1935, and the activities of the communists in Japan
15 caused real anxiety among the Japanese people and the
16 government. The government was charged with the
17 responsibility of maintaining law and order in Japan,
18 and subversive activities of the communists warranted
19 the steps taken for their control. It was entirely
20 unrelated to any alleged preparations for aggressive war.

21 These accused are charged with using propa-
22 ganda, censorship, press, radio and moving pictures
23 for the purpose of furthering the alleged plan or
24 conspiracy for aggressive war. It will be shown that
25 no such use was ever made of these means of communications

1 for such purposes during peace time and it will be
2 further shown that during times of war the uses made
3 of these means of communications were no different
4 than those which could reasonably be expected to be
5 used and were used by other countries during war times.
6 This use was totally unrelated to any alleged common
7 conspiracy among these accused.

8 It will be shown by witnesses, publications
9 and official documents that there was no propaganda
10 as charged by the prosecution to bring about any wars
11 or criminal acts. The evidence will show that there
12 is no foundation for stamping these various measures
13 taken by Japan and some of these accused in the normal
14 operation of the government with the label of aggressive
15 war. The enactment and execution of laws and measures
16 were not for ulterior purposes as claimed but for
17 sound and proper reasons and in the promotion of good
18 government, unrelated to the charges in the Indictment.

19 With respect to the evidence to be present in
20 this division, as has been pointed out in the general
21 opening statement, individual accused may, in the pre-
22 sentation of their defenses, differ with certain items
23 of evidence, the inferences to be drawn therefrom and
24 their involvement therein.

25 Mr. George Yamaoka will now present the

1 evidence of basic documents relating to the surrender,
2 the creation of the Tribunal, treaties and the consti-
3 tutional laws and regulations of Japan.
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1 THE PRESIDENT: Mr. Yamaoka.

2 MR. YAMAOKA: Mr. President and Members of
3 the Tribunal: During the early stages of the prose-
4 cution's case certain basic documents relating to the
5 surrender, the creation and jurisdiction of this Tri-
6 bunal, treaties and agreements, and Japanese laws and
7 ordinances were received in evidence. Many of these
8 documents were admitted by reference to titles only; as
9 to some others, only excerpts therefrom were read;
10 in certain other instances the entire documents were
11 read by the prosecution into the transcript.

12 It will be recalled that the Tribunal ruled
13 that the defense may read such portions of these ex-
14 hibits not previously read by the prosecution at the
15 proper time as part of the defense case. We now avail
16 ourselves of this opportunity and with the Tribunal's
17 permission we shall now read such portions from certain
18 prosecution exhibits which are applicable to this divi-
19 sion of the defense case.

20 We will now read prosecution Exhibit 1:

21 "The Cairo Conference. United States of
22 America: President Roosevelt. China: Generalissimo
23 Chiang Kai-Shek. United Kingdom: Prime Minister
24 Churchill.
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"Statement Released December 1, 1943.

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1 "The several military missions have agreed
2 upon future military operations against Japan. The
3 Three Great Allies expressed their resolve to bring
4 unrelenting pressure against their brutal enemies by
5 sea, land, and air. This pressure is already rising.

6 "The Three Great Allies are fighting this war
7 to restrain and punish the aggression of Japan. They
8 covet no gain for themselves and have no thought of
9 territorial expansion. It is their purpose that Japan
10 shall be stripped of all the islands in the Pacific
11 which she has seized or occupied since the beginning
12 of the first World War in 1914, and that all the terri-
13 tories Japan has stolen from the Chinese, such as Man-
14 churia, Formosa, and the Pescadores, shall be restored
15 to the Republic of China. Japan will also be expelled
16 from all other territories which she has taken by
17 violence and greed. The aforesaid three great powers,
18 mindful of the enslavement of the people of Korea,
19 are determined that in due course Korea shall become
20 free and independent.

21 "With these objects in view the three Allies,
22 in harmony with those of the United Nations at war
23 with Japan, will continue to persevere in the serious
24 and prolonged operations necessary to procure the
25 unconditional surrender of Japan."

1 Next we read prosecution Exhibit 2:

2 "Potsdam Declaration. 26 July 1945. Pro-
3 clamation by Heads of Governments, United States,
4 United Kingdom, and China.

5 "(1) We -- the President of the United States,
6 the President of the National Government of the Repub-
7 lic of China, and the Prime Minister of Great Britain,
8 representing the hundreds of millions of our country-
9 men, have conferred and agree that Japan shall be given
10 an opportunity to end this war.

11 "(2) The prodigious land, sea and air forces
12 of the United States, the British Empire and of China,
13 many times reinforced by their armies and air fleets
14 from the west, are poised to strike the final blows
15 upon Japan. This military power is sustained and in-
16 spired by the determination of all the Allied Nations
17 to prosecute the war against Japan until she ceases to
18 resist.

19 "(3) The result of the futile and senseless
20 German resistance to the might of the aroused free
21 peoples of the world stands forth in awful clarity as
22 an example to the people of Japan. The might that now
23 converges on Japan is immeasurably greater than that
24 which, when applied to the resisting Nazis, necessarily
25 laid waste to the lands, the industry and the method

1 of life of the whole German people. The full appli-
2 cation of our military power, backed by our resolve,
3 will mean the inevitable and complete destruction of
4 the Japanese armed forces and just as inevitably the
5 utter devastation of the Japanese homeland.

6 "(4) The time has come for Japan to decide
7 whether she will continue to be controlled by those
8 self-willed militaristic advisers whose unintelligent
9 calculations have brought the Empire of Japan to the
10 threshold of annihilation, or whether she will follow
11 the path of reason.

12 "(5) Following are our terms. We will not
13 deviate from them. There are no alternatives. We
14 shall brook no delay.

15 "(6) There must be eliminated for all time
16 the authority and influence of those who have deceived
17 and misled the people of Japan into embarking on world
18 conquest, for we insist that a new order of peace, se-
19 curity and justice will be impossible until irrespon-
20 sible militarism is driven from the world.

21 "(7) Until such a new order is established
22 and until there is convincing proof that Japan's war-
23 making power is destroyed, points in Japanese territory
24 to be designated by the Allies shall be occupied to
25 secure the achievement of the basic objectives we are

here setting forth.

1 "(8) The terms of the Cairo Declaration shall
2 be carried out and Japanese sovereignty shall be lim-
3 ited to the islands of Honshu, Hokkaido, Kyushu, Shi-
4 koku and such minor islands as we determine.

5 "(9) The Japanese military forces, after
6 being completely disarmed, shall be permitted to re-
7 turn to their homes with the opportunity to lead peace-
8 ful and productive lives.

9 "(10) We do not intend that the Japanese
10 shall be enslaved as a race or destroyed as a nation,
11 but stern justice shall be meted out to all war crim-
12 inals, including those who have visited cruelties upon
13 our prisoners. The Japanese Government shall remove
14 all obstacles to the revival and strengthening of
15 democratic tendencies among the Japanese people. Free-
16 dom of speech, of religion, and of thought, as well
17 as respect for the fundamental human rights, shall be
18 established.

19 "(11) Japan shall be permitted to maintain
20 such industries as will sustain her economy and permit
21 the exaction of just reparations in kind, but not those
22 which would enable her to re-arm for war. To this end,
23 access to, as distinguished from control of, raw mater-
24 ials shall be permitted. Eventual Japanese participation
25

1 in world trade relations shall be permitted.

2 "(12) The occupying forces of the Allies
3 shall be withdrawn from Japan as soon as these objec-
4 tives have been accomplished and there has been estab-
5 lished in accordance with the freely expressed will of
6 the Japanese people a peacefully inclined and respon-
7 sible government.

8 "(13) We call upon the government of Japan
9 to proclaim now the unconditional surrender of all
10 Japanese armed forces, and to provide proper and ade-
11 quate assurances of their good faith in such action.
12 The alternative for Japan is prompt and utter destruc-
13 tion."

14 THE PRESIDENT: We will recess now for fifteen
15 minutes.

16 (Whereupon, at 1045 a recess was
17 taken until 1100, after which the proceedings
18 were resumed as follows:)
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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Mr. Yamaoka.

4 MR. YAMAOKA: Mr. President, Members of the
5 Tribunal.

6 With the Tribunal's leave we will next read
7 prosecution's exhibit 3:

8 "JAPANESE QUALIFIED ACCEPTANCE

9 "Legation de Suisse

10 "Washington, D.C.

August 10, 1945

11 "Sir:

12 "I have the honor to inform you that the
13 Japanese Minister to Switzerland, upon instructions
14 received from his Government, has requested the Swiss
15 Political Department to advise the Government of the
16 United States of America of the following:

17 "In obedience to the gracious command of
18 His Majesty the Emperor who, ever anxious to enhance
19 the cause of world peace, desires earnestly to bring
20 about a speedy termination of hostilities with a
21 view to saving mankind from the calamities to be
22 imposed upon them by further continuation of the
23 war, the Japanese Government several weeks ago asked
24 the Soviet Government, with which neutral relations
25 then prevailed, to render good offices in restoring

1 peace vis a vis the enemy powers. Unfortunately,
2 these efforts in the interest of peace having failed,
3 the Japanese Government in conformity with the august
4 wish of His Majesty to restore the general peace and
5 desiring to put an end to the untold sufferings en-
6 tailed by war as quickly as possible, have decided
7 upon the following:

8 "The Japanese Government are ready to
9 accept the terms enumerated in the joint declaration
10 which was issued at Potsdam on July 26, 1945, by the
11 heads of the Governments of the United States, Great
12 Britain, and China, and later subscribed by the Soviet
13 Government with the understanding that the said dec-
14 laration does not comprise any demand which prejudices
15 the prerogatives of His Majesty as a Sovereign Ruler.

16 "The Japanese Government sincerely hope
17 that this understanding is warranted and desire keenly
18 that an explicit indication to that effect will be
19 speedily forthcoming.'

20 "In transmitting the above message the
21 Japanese Minister added that his Government begs the
22 Government of the United States to forward its answer
23 through the intermediary of Switzerland. Similar re-
24 quests are being transmitted to the Governments of Great
25 Britain and the Union of Soviet Socialist Republics

1 through the intermediary of Sweden, as well as to
2 the Government of China through the intermediary of
3 Switzerland. The Chinese Minister at Berne has
4 already been informed of the foregoing through the
5 channel of the Swiss Political Department.

6 "Please be assured that I am at your disposal
7 at any time to accept for and forward to my Government
8 the reply of the Government of the United States.

9 "Accept, Sir, the renewed assurances of my
10 highest consideration."

11 I shall omit the signatures.

12 We will next read prosecution's exhibit 4:

13 "REPLY BY SECRETARY OF STATE TO
14 JAPANESE QUALIFIED ACCEPTANCE

15 "August 11, 1945

16 "Sir:

17 "I have the honor to acknowledge receipt
18 of your note of August 10, and in reply to inform
19 you that the President of the United States has
20 directed me to send to you for transmission by your
21 Government to the Japanese Government the following
22 message on behalf of the Governments of the United
23 States, the United Kingdom, the Union of Soviet
24 Socialist Republics, and China:

25 "With regard to the Japanese Government's

1 through the intermediary of Sweden, as well as to
2 the Government of China through the intermediary of
3 Switzerland. The Chinese Minister at Berne has
4 already been informed of the foregoing through the
5 channel of the Swiss Political Department.

6 "Please be assured that I am at your disposal
7 at any time to accept for and forward to my Government
8 the reply of the Government of the United States.

9 "Accept, Sir, the renewed assurances of my
10 highest consideration."

11 I shall omit the signatures.

12 We will next read prosecution's exhibit 4:

13 "REPLY BY SECRETARY OF STATE TO
14 JAPANESE QUALIFIED ACCEPTANCE

15 "August 11, 1945

16 "Sir:

17 "I have the honor to acknowledge receipt
18 of your note of August 10, and in reply to inform
19 you that the President of the United States has
20 directed me to send to you for transmission by your
21 Government to the Japanese Government the following
22 message on behalf of the Governments of the United
23 States, the United Kingdom, the Union of Soviet
24 Socialist Republics, and China:

25 "With regard to the Japanese Government's

1 message accepting the terms of the Potsdam proclama-
2 tion but containing the statement, 'with the under-
3 standing that the said declaration does not comprise
4 any demand which prejudices the prerogatives of His
5 Majesty as a sovereign ruler,' our position is as
6 follows:

7 "From the moment of surrender the authority
8 of the Emperor and the Japanese Government to rule
9 the state shall be subject to the Supreme Commander
10 of the Allied powers who will take such steps as he
11 deems proper to effectuate the surrender terms.

12 "The Emperor will be required to authorize
13 and ensure the signature by the Government of Japan
14 and the Japanese Imperial General Headquarters of the
15 surrender terms necessary to carry out the provisions
16 of the Potsdam Declaration, and shall issue his
17 commands to all the Japanese military, naval and air
18 authorities and to all the forces under their control
19 wherever located to cease active operations and to
20 surrender their arms, and to issue such other orders
21 as the Supreme Commander may require to give effect
22 to the surrender terms.

23 "Immediately upon the surrender the
24 Japanese Government shall transport prisoners of
25 war and civilian internees to places of safety, as

1 directed, where they can quickly be placed aboard
2 Allied transports.

3 "The ultimate form of government of Japan
4 shall, in accordance with the Potsdam declaration,
5 be established by the freely expressed will of the
6 Japanese people.

7 "The armed forces of the Allied Powers will
8 remain in Japan until the purposes set forth in the
9 Potsdam Declaration are achieved."

10 "Accept, Sir, the renewed assurances of my
11 highest consideration."

12 I shall omit the signature.

13 We next read prosecution's exhibit 5:

14 "FINAL JAPANESE ACCEPTANCE

15 "Legation de Suisse

16 "Washington, D.C.

August 14, 1945

17 "Sir:

18 "I have the honor to refer to your note of
19 August 11, in which you requested me to transmit to
20 my Government the reply of the Governments of the
21 United States, the United Kingdom, the Union of Soviet
22 Socialist Republics and China to the message from the
23 Japanese Government which was communicated in my note
24 of August 10.

25 "At 20.10 today (Swiss Time) the Japanese

1 Minister to Switzerland conveyed the following
2 written statement to the Swiss Government for
3 transmission to the four Allied Governments:

4 "Communication of the Japanese Government
5 of August 14, 1945, addressed to the Governments of
6 the United States, Great Britain, the Soviet Union,
7 and China:

8 "With reference to the Japanese Government's
9 note of August 10 regarding their acceptance of the
10 provisions of the Potsdam declaration and the reply
11 of the Governments of the United States, Great
12 Britain, the Soviet Union, and China sent by American
13 Secretary of State Byrnes under the date of August 11,
14 the Japanese Government have the honor to communicate
15 to the Governments of the four powers as follows:

16
17 "1. His Majesty the Emperor has issued an
18 Imperial rescript regarding Japan's acceptance of
19 the provisions of the Potsdam declaration.

20 "2. His Majesty the Emperor is prepared to
21 authorize and ensure the signature by his Government
22 and the Imperial General Headquarters of the necessary
23 terms for carrying out the provisions of the Potsdam
24 declaration. His Majesty is also prepared to issue
25 his commands to all the military, naval and air author-
ities of Japan and all the forces under their control

1 wherever located to cease active operations, to
2 surrender arms and to issue such other orders as
3 may be required by the Supreme Commander of the
4 Allied Forces for the execution of the above-mentioned
5 term.'

6 "Accept, Sir, the renewed assurances of my
7 highest consideration."

8 I shall omit the signatures.

9 We will next read prosecution's exhibit
10 6, including the proclamation by the Emperor of Japan:

11 "INSTRUMENT OF SURRENDER

12 "We, acting by command of and in behalf of
13 the Emperor of Japan, the Japanese Government and
14 the Japanese Imperial General Headquarters, hereby
15 accept the provisions set forth in the declaration
16 issued by the heads of the Governments of the United
17 States, China and Great Britain on 26 July 1945 at
18 Potsdam, and subsequently adhered to by the Union of
19 Soviet Socialist Republics, which four powers are
20 hereafter referred to as the Allied Powers.

21 "We hereby proclaim the unconditional sur-
22 render to the Allied Powers of the Japanese Imperial
23 General Headquarters and of all Japanese armed forces
24 and all armed forces under Japanese control wherever
25 situated.

1 "We hereby command all Japanese forces
2 wherever situated and the Japanese people to cease
3 hostilities forthwith, to preserve and save from
4 damage all ships, aircraft, and military and civil
5 property and to comply with all requirements which
6 may be imposed by the Supreme Commander for the
7 Allied Powers or by agencies of the Japanese Govern-
8 ment at his direction.

9 "We hereby command the Japanese Imperial
10 General Headquarters to issue at once orders to the
11 Commanders of all Japanese forces and all forces
12 under Japanese control wherever situated to surrender
13 unconditionally themselves and all forces under
14 their control.

15 "We hereby command all civil, military and
16 naval officials to obey and enforce all proclamations,
17 orders and directives deemed by the Supreme Commander
18 for the Allied Powers to be proper to effectuate this
19 surrender and issued by him or under his authority
20 and we direct all such officials to remain at their
21 posts and to continue to perform their non-combatant
22 duties unless specifically relieved by him or under
23 his authority.

24 "We hereby undertake for the Emperor, the
25 Japanese Government and their successors to carry out

1 the provisions of the Potsdam Declaration in good
2 faith, and to issue whatever orders and take whatever
3 action may be required by the Supreme Commander for
4 the Allied Powers or by any other designated repre-
5 sentative of the Allied Powers for the purpose of giv-
6 ing effect to that Declaration.

7 "We hereby command the Japanese Imperial
8 Government and the Japanese Imperial General Head-
9 quarters at once to liberate all allied prisoners of
10 war and civilian internees now under Japanese control
11 and to provide for their protection, care, mainten-
12 ance and immediate transportation to places as directed.

13 "The authority of the Emperor and the
14 Japanese Government to rule the state shall be sub-
15 ject to the Supreme Commander for the Allied Powers
16 who will take such steps as he deems proper to
17 effectuate these terms of surrender.

18 "Signed at Tokyo Bay, Japan, at 0904 on the
19 Second day of September, 1945.

20 "Mamoru SHIGEMITSU

21 "By Command and in behalf of the Emperor of
22 Japan and the Japanese Government

23 "Yoshijiro UMEZO

24 "By Command and in behalf of the Japanese
25 Imperial General Headquarters.

1 "Accepted at Tokyo Bay, Japan at 0908 on
2 the Second day of September, 1945 for the United
3 States, Republic of China, United Kingdom and the
4 Union of Soviet Socialist Republics, and in the
5 interests of the other United Nations at war with
6 Japan.

7 "Douglas MacArthur

8 "Supreme Commander for the Allied
9 Powers."

10 I shall omit the rest of the signatures.

11 "PROCLAMATION BY THE EMPEROR OF JAPAN

12 "Accepting the terms set forth in the Declar-
13 ation issued by the heads of the Governments of the
14 United States, Great Britain and China on July 26,
15 1945 at Potsdam and subsequently adhered to by the
16 Union of Soviet Socialist Republics, I have commanded
17 the Japanese Imperial Government and the Japanese
18 Imperial General Headquarters to sign on my behalf
19 the instrument of surrender presented by the Supreme
20 Commander for the Allied Powers and to issue General
21 Orders to the Military and Naval forces in accordance
22 with the direction of the Supreme Commander for the
23 Allied Powers. I command all my people forthwith to
24 cease hostilities, to lay down their arms and faith-
25 fully to carry out all the provisions of the instrument

1 of surrender and the General Orders issued by the
2 Japanese Imperial General Headquarters thereunder."

3 We now read excerpts from prosecution's
4 exhibit 7, starting with page 3:
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1 In the clear, from Washington NR WCI 32355
2 DTD 28 December 45 continued.

3 THE PRESIDENT: Omit reading those things,
4 Mr. Yamaoka. We do not have time to listen to all
5 that.

6 MR. YAMAOKA: I shall then continue reading
7 from page 3:

8 "A Far Eastern Commission agreement was
9 reached with the concurrence of China for the estab-
10 lishment of a Far Eastern Commission to take the
11 place of the Far Eastern Advisory Commission. The
12 terms of reference for the Far Eastern Commission are
13 as follows:

14 "I. Establishment of the Commission:

15 "Far Eastern Commission is hereby estab-
16 lished composed of the representatives of the Union
17 of Soviet Socialist Republics, United Kingdom, United
18 States, China, France, The Netherlands, Canada, Aus-
19 tralia, New Zealand, India and the Philippine Common-
20 wealth.
21

22 "II. Functions:

23 "A. The functions of the Far Eastern Com-
24 mission shall be:

25 "(1) To formulate the policies, principles
and standards in conformity with which the fulfillment

1 by Japan of its obligations under the Terms of Sur-
2 render may be accomplished. (2) To review on the
3 request of any member any directive issued to the
4 Supreme Commander for the Allied Powers or any ac-
5 tion taken by the Supreme Commander involving policy
6 decisions within the jurisdiction of the Commission.

7 (3) To consider such other matters as may be as-
8 signed to it by agreement among the participating
9 governments reached in accordance with the voting
10 procedure provided for in Article V-2 hereunder.

11 "B. The Commission shall not make recom-
12 mendations with regard to conduct of military opera-
13 tions nor with regard to territorial adjustments. The
14 Commission in its activities will proceed from the
15 fact that there has been formed an Allied Council
16 for Japan and will respect existing control machinery
17 in Japan including the chain of Command from the
18 United States Government to the Supreme Commander and
19 the Supreme Commander's Command of Occupation Forces.

20 "III. Functions of the United States Govern-
21 ment:

22 "1. The United States Government shall pre-
23 pare directives in accordance with policy decisions
24 of the Commission and shall transmit them to the
25 Supreme Commander through the appropriate United

1 States Government Agency. The Supreme Commander
2 shall be charged with the implementation of the
3 directives which express the policy decisions of the
4 Commission.

5 "2. If the Commission decides that any
6 directive or action reviewed in accordance with
7 Article II-A-2 should be modified its decision shall
8 be regarded as a policy decision.

9 "3. The United States Government may issue
10 interim directives to the Supreme Commander pending
11 action by the Commission whenever urgent matters
12 arise not covered by policies already formulated by
13 the Commission, provided that any directive dealing
14 with fundamental changes in the Japanese Constitutional
15 structure or in the regime of control or dealing with
16 a change in the Japanese Government as a whole will
17 be issued only following consultation and following
18 the attainment of agreement in the Far Eastern Com-
19 mission.

20 "4. All directives issued shall be filed
21 with the Commission."

22 I shall now omit through to page 6, paragraph
23 5:

24 "5. The Supreme Commander shall issue all
25 orders for the implementation of the Terms of Surrender,

1 the Occupation and control of Japan and directives
2 supplementary thereto. In all cases action will be
3 carried out under and through the Supreme Commander
4 who is the sole Executive Authority for the Allied
5 Powers in Japan. He will consult and advise with
6 the Council in advance of the issuance of orders on
7 matters of substance, the exigencies of the situation
8 permitting his decisions upon these matters shall be
9 controlling."

10 I shall then omit to paragraph IV on page 7:

11 "IV. China.

12 "The 3 Foreign Secretaries exchanged views
13 with regard to the situation in China. They were
14 in agreement as to the need for a unified and demo-
15 cratic China under the National Government, for
16 broad participation by democratic elements in all
17 branches of the National Government and for a cessa-
18 tion of civil strife. They reaffirmed their adherence
19 to the policy of non-interference in the internal
20 affairs of China. Mr. Molotov and Mr. Byrnes had
21 several conversations concerning Soviet and American
22 Armed Forces in China. Mr. Molotov stated that the
23 Soviet Forces had disarmed and deported Japanese
24 Troops in Manchuria, but that withdrawal of Soviet
25 Forces had been postponed until February 1st at the

1 request of the Chinese Government. Mr. Byrnes pointed
2 out that American Forces were in North China at the
3 request of the Chinese Government and referred also
4 to the primary responsibility of the United States in
5 the implementation of the Terms of Surrender with
6 respect to the disarming and deportation of Japanese
7 Troops. He stated that American Forces would be
8 withdrawn just as soon as this responsibility was
9 discharged or the Chinese Government was in a position
10 to discharge the responsibility without the assistance
11 of American Forces. The 2 Foreign Secretaries were
12 in complete accord as to the desirability of withdrawal
13 of Soviet and American Forces from China at the
14 earliest practicable moment consistent with the dis-
15 charge of their obligations and responsibility."

16
17 We next read prosecution exhibit 8:

18 "SPECIAL PROCLAMATION

19 "ESTABLISHMENT OF AN INTERNATIONAL MILITARY
20 TRIBUNAL FOR THE FAR EAST

21 "WHEREAS, the United States and the Nations
22 allied therewith in opposing the illegal wars of
23 aggression of the Axis Nations, have from time to time
24 made declarations of their intentions that war crimi-
25 nals should be brought to justice;

"WHEREAS, the Governments of the Allied

1 Powers at war with Japan on the 26th July 1945 at
2 Potsdam, declared as one of the terms of surrender
3 that stern justice shall be meted out to all war
4 criminals including those who have visited cruelties
5 upon our prisoners;

6 "WHEREAS, by the Instrument of Surrender of
7 Japan executed at Tokyo Bay, Japan, on the 2nd
8 September 1945, the signatories for Japan, by command
9 of and in behalf of the Emperor and the Japanese Govern-
10 ment accepted the terms set forth in such Declaration
11 at Potsdam;

12 "WHEREAS, by such Instrument of Surrender,
13 the authority of the Emperor and the Japanese Govern-
14 ment to rule the state of Japan is made subject to the
15 Supreme Commander for the Allied Powers, who is
16 authorized to take such steps as he deems proper to
17 effectuate the terms of surrender;

18 "WHEREAS, the undersigned has been desig-
19 nated by the Allied Powers as Supreme Commander for
20 the Allied Powers to carry into effect the general
21 surrender of the Japanese armed forces;

22 "WHEREAS, the Governments of the United
23 States, Great Britain and Russia at the Moscow Con-
24 ference, 26th December 1945, having considered the
25 effectuation by Japan of the Terms of Surrender, with

1 the concurrence of China have agreed that the Supreme
2 Commander shall issue all orders for the implementa-
3 tion of the Terms of Surrender.

4 "NOW, THEREFORE, I, Douglas MacArthur, as
5 Supreme Commander for the Allied Powers, by virtue of
6 the authority so conferred upon me, in order to im-
7 plement the Term of Surrender which requires the
8 meting out of stern justice to war criminals, do
9 order and provide as follows:

10 "ARTICLE 1. There shall be established an
11 International Military Tribunal for the Far East for
12 the trial of those persons charged individually, or
13 as members of organizations, or in both capacities,
14 with offenses which include crimes against peace.

15 "ARTICLE 2. The Constitution, jurisdiction
16 and functions of this Tribunal are those set forth
17 in the Charter of the International Military Tribunal
18 for the Far East, approved by me this day.

19 "ARTICLE 3. Nothing in this order shall
20 prejudice the jurisdiction of any other international,
21 national or occupation court, commission or other
22 tribunal established or to be established in Japan
23 or in any territory of a United Nation with which
24 Japan has been at war, for the trial of war criminals.
25

"Given under my hand at Tokyo, this 19th day

1 of January, 1946.

2 "DOUGLAS MacARTHUR, General of the Army,
3 United States Army, Supreme Commander for the Allied
4 Powers."

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1 We now read from prosecution's exhibit 12:

2 "Convention between the United States and
3 Certain Powers for the Pacific Settlement of Inter-
4 national Disputes.

5 "Signed at The Hague July 29, 1899.

6 "Ratification advised by the Senate
7 February 5, 1900.

8 "Ratified by the President of the United
9 States April 7, 1900.

10 "Ratification deposited with the Netherlands
11 Government September 4, 1900.

12 "Proclaimed November 1, 1901."

13 THE PRESIDENT: Why read all that, Mr.
14 Yamaoka? You do not question its due application?

15 MR. YAMAOKA: No, we do not, your Honor.
16 I shall omit reading it hereafter.

17 I shall commence reading from the bottom
18 of page 2:

19 "Animated" --

20 THE PRESIDENT: I would like to know why it
21 is necessary for you to read this. I do not think it
22 is going to be any more convenient for us to have it
23 in the transcript. You see, you are not reading
24 parts omitted by the prosecution; you are reading the
25 lot. In effect, you are giving us another copy of

1 the exhibit and in no very convenient way.
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1 MR. YAMAOKA: If your Honor please, the
2 Tribunal will recall that during the early stages
3 of the prosecution's case this exhibit, as well as
4 the exhibits to follow, to which we desire to call
5 the attention of the Tribunal, were introduced by
6 reference to titles only; and that was primarily
7 because, as I understand it, no definite procedure
8 for the introduction of these early documents had
9 been determined.

10 THE PRESIDENT: But all these documents
11 are in evidence even if they have not been judicially
12 noticed. I think we all agree they should be. I
13 am reminded that there was an order covering these
14 in relation to judicial notice. Just tell us the
15 documents upon which you propose to rely and in
16 special cases the particular parts. That will do,
17 Mr. Yamaoka.

18 MR. YAMAOKA: Your Honor will recall that
19 on several occasions the privilege was given to the
20 defense, at the proper time, to read such excerpts
21 or such parts of the prosecution's exhibits as the
22 defense desired to call to the attention of the
23 Tribunal; and we propose to read only the pertinent
24 portions of these documents to which we beg to invite
25 the Court's attention at later stages of the case.

1 THE PRESIDENT: Yes.

2 MR. YAMAOKA: In conformity with the Tribunal's
3 desire, I shall omit the prefatory remarks of these
4 instruments and read pertinent Articles of the
5 Conventions.

6 With the Tribunal's permission I should
7 like to read from page 9, Title I on for several
8 Articles. May I proceed, your Honor?

9 THE PRESIDENT: Proceed, Mr. Yamaoka.

10 MR. YAMAOKA: Article I on page 9:

11 (Reading) "With a view to obviating, as
12 far as possible, recourse to force in the relations
13 between States, the Signatory Powers agree to use
14 their best efforts to insure the pacific settlement
15 of international differences."

16 THE PRESIDENT: How do you propose to make
17 that the subject of evidence? You see, you are
18 supposed to be making an opening statement of your
19 evidence. This is pure law. Your attitude is just
20 as objectionable as that of the Japanese counsel who
21 was not allowed to proceed.

22 MR. YAMAOKA: Well, if the Tribunal please,
23 this has been offered by the prosecution as an
24 exhibit in the case.

25 THE PRESIDENT: They asked us to take judicial

1 notice of these documents. We did, and they gave us
2 copies. They were marked as exhibits for convenience
3 sake. They are still statements of law, Mr. Yamaoka.

4 MR. YAMAOKA: With great respect, your
5 Honor, this Treaty, the Hague Convention III, is
6 one of those basic treaties which the accused are
7 charged with having violated.

8 THE PRESIDENT: It is all unnecessary.
9 That is what I am trying to indicate to you, Mr.
10 Yamaoka. All these things are before us.

11 MR. YAMAOKA: I am not endeavouring to
12 argue with the Tribunal, Mr. President, but we, the
13 defense, thought that we had the privilege of pro-
14 ceeding to read certain pertinent **parts** of these
15 prosecution exhibits. I believe your Honor has
16 ruled several times on that during the course of
17 the trial.

18 THE PRESIDENT: You are here to tell us
19 now what facts you are going to prove, and these
20 are things that are already proved and in evidence.
21 They are proved actually. They are judicially noticed.
22 They are not merely in evidence. They are established
23 facts, and there is no need for you to repeat them.
24 Just tell us what new facts you propose to introduce,
25 Mr. Yamaoka.

1 MR. YAMACKA: Well, if your Honor please,
2 this is in the phase of the defense case where we
3 are inviting the attention of the Tribunal to
4 certain evidence in the case. We are not in the
5 phase of the opening statement at all. It is part
6 of the defense case, and at the time these documents
7 were introduced the defense sought to read certain
8 excerpts which they deemed pertinent to their case;
9 but the request was, I believe, denied, and the
10 right reserved to the defense to read such portions
11 therefrom as deemed necessary by them at the proper
12 time when the defense case came on.

13 THE PRESIDENT: I can only repeat: You
14 are opening, or should be opening, evidence you
15 propose to adduce. You are referring to facts already
16 established about which there is no question.

17 MR. YAMACKA: Well, will the Tribunal permit
18 a reference to certain Articles, not the reading?

19 THE PRESIDENT: Well, I cannot see how it is
20 necessary to do even that, Mr. Yamaoka, in order
21 for you to make a statement of the evidence you
22 intend to adduce.
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1 MR. YAMAOKA: Mr. President, may I endeavor
2 to clarify further briefly just what our position is?
3 We are in that portion of the defense case where we
4 intend to introduce evidence or call attention to
5 certain parts of evidence.

6 THE PRESIDENT: Well, we are a bit apprehen-
7 sive. I have seen a list of eighty odd prosecution
8 documents that you propose to read.

9 MR. YAMAOKA: Yes, your Honor.

10 THE PRESIDENT: They are without advantage
11 to anybody, either to the bench or to yourself.
12 If you say, "In the course of giving evidence we
13 shall have occasion to refer to certain documents,"
14 stating the exhibit number and the part, that will
15 be sufficient for our purposes.

16 MR. YAMAOKA: Mr. President, that is what
17 we propose to do. In the interest of orderly proced-
18 ure we thought it best to refer to these documents
19 at the very beginning and to get them out of the way.

20 THE PRESIDENT: Well, put it this way:
21 Hague Convention of 1899, exhibit number, whatever
22 it is -- 8 -- page, and paragraph.

23 MR. YAMAOKA: We had only intended to call
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1 the Tribunal's attention to seven of the articles
2 here. That was all.

3 THE PRESIDENT: Proceed.

4 MR. YAMAOKA: Then, may I invite the Tribu-
5 nal's attention to Title II, Article 2, Article 3,
6 Article 4, Article 5, Article 6, and Article 7?

7 THE PRESIDENT: Yes.

8 MR. YAMAOKA: And also to the reservations
9 and the signatures of the contracting powers there-
10 under, on pages 29 through to 32.

11 MR. BROOKS: Mr. President, I would like
12 as a point of information to inquire: In the join-
13 ing with the general phase I understood that the
14 twenty-six and some odd defendants -- having these
15 statements read would do away with our having to
16 read them in our individual cases, and that we would
17 refer to a certain page on them. If the prosecution
18 had not placed these documents before this court as
19 exhibits, the ones that counsel in behalf of all of
20 us is putting forward, they would now be tendered
21 as exhibits at this time, the relevant portions we
22 are going to rely on later on in individual cases
23 and any argument we were going to put forth. But if
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1 we are to be foreclosed on that point it means that
2 certain of us will have to go back twenty-six times
3 possibly on some of these points and refer to them.

4 I thought, being on the Documents Committee,
5 that this has been of great assistance to us. We
6 have enjoyed this measure of saving time, and I
7 thought that if I would bring that point to the
8 Court's attention -- that otherwise if we cannot put
9 this material in at this time and refer to it later
10 on, it is going to cause undue repetition and it is
11 going to mean that additional matter will have to
12 be pulled from these extracts for several days to put
13 in their phase.

14 THE PRESIDENT: If it is convenient for us
15 to use this document instead of handling a transcript
16 every time, it must be so for you. You have these
17 documents as we have them.

18 MR. BROOKS: Yes. We have felt that a ex-
19 tract from a large number of documents here -- ex-
20 tracting the proportionate part and laying it out with
21 the other parts in brief form would be of great bene-
22 fit in presenting our case.

23 THE PRESIDENT: We have gone as far as we
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1 intend to go in this matter, Captain Brooks.

2 Proceed.

3 MR. YAMAOKA: With the Tribunal's permission,
4 then, may I refer to prosecution exhibit 13, which
5 is the Hague Convention for the Pacific Settlement of
6 International Disputes of October 18, 1907?

7 THE PRESIDENT. The Hague Convention of
8 1906.

9 MR. YAMAOKA: 1907, your Honor; Articles 1,
10 2, 3, 4, 5, 6, 7, 8, and 9 inclusive.

11 Also may I invite the Tribunal's attention
12 to Part 4, on page 11, Articles 37 to 40 inclusive.
13 That will be all for that exhibit.

14 We next invite the attention of the Tribunal
15 to Prosecution Exhibit 14. It will be noted that
16 this exhibit offered by the prosecution omits Article
17 1. Prosecution exhibit 15, at pages 3 to 7, however,
18 contains prosecution exhibit 14 in full. I there-
19 fore beg to invite the Tribunal's attention to the
20 entire treaty, as shown in exhibit 15, and particular-
21 ly to Article 1, which was omitted from exhibit 14.

22 With the Tribunal's permission I should
23 desire to obtain permission for Mr. Howard, my asso-
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1 ciate, to continue on behalf of the defense.

2 THE PRESIDENT: We will hear Mr. Howard after
3 lunch. We will adjourn now until half past one.

4 (Whereupon, at 1200, a recess was
5 taken.)
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AFTERNOON SESSION

The Tribunal met, pursuant to recess,
at 1330.

MARSHAL OF THE COURT: The International
Military Tribunal for the Far East is now resumed.

THE PRESIDENT: Mr. Yamaoka.

MR. YAMAOKA: If the Tribunal please, just
before the noon recess your Honor will recall that it
ruled that the Hague Convention III, for instance, was
a matter of judicial notice and while I did recall
at the time that such an order, and order on judicial
notice, had been entered I wasn't quite familiar with
the full terms thereof and during the noon recess I
took the liberty of checking back the record and I
should desire, with the Tribunal's permission, to
point out certain parts of the record dealing with this
subject in the hope that it will be of assistance to
the Tribunal.

This subject first came up on the 23rd of
May 1946 upon the motion of the prosecution bearing
Paper No. 76, I believe.

Paragraph 4 of this motion reads as follows:

"(4) FOR AN ORDER that the Court take judicial
notice of each of the documents set out in Schedule B

hereto as basic documents, without further authentication
or proof of the same."

Schedule B contains a list of 95 basic documents with which we are here concerned at the moment. This matter came up before the Tribunal on the 3rd of June 1946 and I beg to refer to pages 357 et sequitur of the record. Mr. Justice Mansfield on behalf of the prosecution in presenting the matter stated as follows:

"With respect to number four for an order that the Court take judicial notice of each of the documents set out in Schedule B hereto as basic documents without further proof or authentication or proof of the same -- that motion also may be inartistically worded and what is really the basis of the application is that the prosecution be allowed to introduce in evidence the documents set out in the Schedule without any formal proof of their authenticity and without prejudice to the right of the defense to object to any of them, when they are referred to in evidence, on the grounds of immateriality or irrelevance, or on any other substantial ground."

On page 359 of the record, Mr. Justice Mansfield continued:

"Therefore, instead of the motion as it appears in the paper, I ask for an order that the documents in

1 Schedule B -- at least that the prosecution be at liberty
2 to produce the documents listed in Schedule B without
3 formal proof thereof."

4 On page 360 of the record, the President
5 stated:

6 "It is suggested then that your motion should
7 read: 'The Court shall not require proof of the
8 authenticity of documents set out in Schedule B hereto
9 and shall receive them in evidence.'"

10 There is further discussion of this subject
11 which I shall not read on page 368 of the record and
12 also on page 380. As a result on the 4th of June 1946,
13 an order was entered by the Tribunal which -- a part
14 of which reads as follows:

15 "ORDERED: Granted, as to the 4th paragraph
16 of said motion, in that the Tribunal gives liberty
17 to the Prosecution to produce the documents listed in
18 Schedule B of the motion without formal proof thereof,
19 but subject to all just exceptions involving the accuracy,
20 relevancy and materiality of the documents. Subject to
21 such exceptions at the trial, the Tribunal will not
22 require proof of the authenticity of the documents and
23 shall receive them in evidence."

24 In the light of this record, the defense would
25 desire to know whether many of these basic documents,

1 in respect of which the Tribunal has ruled this morn-
2 ing, can not be further considered for the purpose
3 of reading into the record.

4 THE PRESIDENT: What you have read makes no
5 change, Mr. Yamaoka. The position is still the same.
6 All these things are in evidence. Why read them into
7 the transcript? It does not make for convenience. We
8 can refer to them in the pamphlets.

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1 MR. YAMAOKA: Well, we will naturally comply
2 with the Tribunal's ruling, but I desire to point out
3 that the Tribunal has repeatedly said that it will
4 not undertake to read documents which counsel do not
5 see fit to read into the transcript, and that counsel
6 must read the parts which they consider to be sig-
7 nificant into the record. It is in conformity with
8 that rule that we have been proceeding.

9 THE PRESIDENT: Yes, but why at this stage?
10 That is the point. Why read them at this stage?
11 You can read them when you are giving evidence which
12 bears on them. Or you can read them in the course of
13 your summation, but why now?

14 MR. YAMAOKA: Well, if your Honor pleases,
15 this is the general phase of the defense case and
16 we are now in the stage where we desire to offer
17 evidence on behalf of the defense.

18 THE PRESIDENT: These matters are already
19 in evidence. All you have to do is to refer to
20 them. Don't read them again. We will be here for
21 weeks listening to you reading. Read them as the
22 occasion arises, not now. It will not help us to
23 read all these things now.

24 MR. YAMAOKA: With great respect may I
25 call to the Tribunal's attention that these documents

1 have never been read into the transcript before.

2 THE PRESIDENT: We undertake to refer to
3 every passage in any of these documents that you
4 desire us to refer to and to read. You see, you
5 are in an opening statement; you keep forgetting
6 that. And an opening statement is a statement of
7 evidence. I can't call this Hague Convention of
8 1899 evidence because it is already in evidence. It
9 is not fresh evidence. It is already in evidence.
10 You are reading evidence already given.

11 MR. YAMAOKA: Well, if the Tribunal please,
12 we are not in the phase of -- we are not continuing
13 the defense opening statement at the present time.
14 We are now at the point of referring to prosecution's
15 exhibits and reading excerpts therefrom, in accord-
16 ance with the Tribunal's previous rulings, and
17 laying the basis for further evidence to follow in
18 the defense case.

19 THE PRESIDENT: Well, you are giving
20 evidence by giving evidence already given.

21 MR. YAMAOKA: I hope that I made myself
22 clear, your Honor, that these documents to which we
23 wish to allude at the moment have never been read
24 into the transcript.

25 THE PRESIDENT: Well, you will not take

1 our word for it that we will read everything to
2 which you refer. Apparently you are not satisfied
3 with that, but I think we ought to insist on that.

4 MR. YAMAOKA: Well then, Mr. Collins Howard
5 will continue for the defense.

6 MR. HOWARD: Mr. President.

7 THE PRESIDENT: Mr. Howard.

8 MR. HOWARD: And Members of the Tribunal:

9 I was to have read from exhibit 15, prose-
10 cution exhibit, chapter 2, Laws and Customs of War
11 on Land. That is on page 9.

12 This is the laws and customs that these
13 accused, or a large number of them, are charged with
14 having violated.

15 In view of the Court's statement, however,
16 I will not read these unless the Court expresses a
17 desire to hear them at this time.

18 THE PRESIDENT: We do not desire you to read
19 those things, Mr. Howard. You may read parts of
20 that Convention which show how the articles are
21 brought into force. That is important. I do not
22 know that that has been read, yet it may have been.

23 MR. HOWARD: This is the Hague Convention ,
24 No. IV of 18 October 1907. Convention respecting the
25 laws and customs of war on land. And then follows a

1 list of sovereigns and heads of the states who sent
2 plenipotentiaries to the conference.

3 (Reading) "Seeing that, while seeking
4 means to preserve peace and prevent armed conflicts
5 between nations, it is likewise necessary to bear in
6 mind the case where the appeal to arms has been
7 brought about by events which their care was unable
8 to avert;

9 "Animated by the desire to serve, even in
10 this extreme case, the interests of humanity and the
11 ever progressive needs of civilization;

12 "Thinking it important, with this object,
13 to revise the general laws and customs of war,
14 either with a view to defining them with greater pre-
15 cision or to confining them within such limits as
16 would mitigate their severity as far as possible;

17 "Have deemed it necessary to complete and
18 explain in certain particulars the work of the First
19 Peace Conference, which, following on the Brussels
20 Conference of 1874, and inspired by the ideas dictated
21 by a wise and generous forethought, adopted provisions
22 intended to define and govern the usages of war on
23 land.

24 "According to the views of the High Contract-
25 ing Parties, these provisions, the wording of which

1 has been --"

2 THE MONITOR: Mr. Howard. Mr. Howard. In
3 view of the President's ruling this morning I had
4 not prepared to read this on the IBM system at the
5 same time. In view of that I will have to do this
6 in the relay system, so that when you get to the
7 end of that paragraph will you please stop, then we
8 will read it over number one in the relay system.
9 Thank you.

10 THE PRESIDENT: I did not intend that you
11 should read what you are reading now, but there is
12 somewhere in those Conventions some directions as to
13 how they are to come into operation. However, you
14 are not prepared to deal with that at present.

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1 MR. HOWARD: "Article 1.

2 "The Contracting Powers shall issue in-
3 structions to their armed land forces which shall be
4 in conformity with the Regulations respecting the
5 Laws and Customs of War on Land, annexed to the
6 present Convention.

7 "Article 2.

8 "The provisions contained in the Regulations
9 referred to in Article 1, as well as in the present
10 Convention, do not apply except between Contracting
11 Powers, and then only if all the belligerents are
12 parties to the Convention.

13 "Article 3.

14 "A belligerent party which violates the
15 provisions of the said Regulations shall, if the
16 case demands, be liable to pay compensation. It
17 shall be responsible for all acts committed by per-
18 sons forming part of its armed forces.

19 "Article 4.

20 "The present Convention, duly ratified,
21 shall as between the Contracting Powers, be substi-
22 tuted for the Convention of the 29th July, 1899, re-
23 specting the Laws and Customs of War on Land.

24 "The Convention of 1899 remains in force as
25 between the Powers which signed it, and which do not

1 also ratify the present Convention."

2 "ANNEX TO THE CONVENTION.

3 "REGULATIONS RESPECTING THE LAWS AND CUS-
4 TOMS OF WAR ON LAND.

5 "Section 1. - On Belligerents."

6 I am reading from page 15 now.

7 "Chapter 1. - The Qualifications of
8 Belligerents.

9 "Article 1.

10 "The laws, rights, and duties of war apply
11 not only to armies, but also to militia and volunteer
12 corps fulfilling the following conditions:

13 "1. To be commanded by a person responsible
14 for his subordinates;

15 "2. To have a fixed distinctive emblem rec-
16 ognizable at a distance;

17 "3. To carry arms openly; and

18 "4. To conduct their operations in accord-
19 ance with the laws and customs of war.

20 "In countries where militia or volunteer
21 corps constitute the army, or form part of it, they
22 are included under the denomination 'army.'

23 "Article 2.

24 "The inhabitants of a territory which has
25 not been occupied, who, on the approach of the enemy,

1 spontaneously take up arms to resist the invading
2 troops without having had time to organize themselves
3 in accordance with Article 1, shall be regarded as
4 belligerents if they carry arms openly and if they
5 respect the laws and customs of war.

6 "Article 3.

7 "The armed forces of the belligerent parties
8 may consist of combatants and noncombatants. In the
9 case of capture by the enemy, both have a right to
10 be treated as prisoners of war."

11 I believe that covers the part that you --

12 THE PRESIDENT: Well, of course, I assume
13 that the defense are going to rely on those provi-
14 sions in view of the cross-examination even though
15 they apply only in certain circumstances.

16 MR. HOWARD: I am not in a position to
17 state at this time what they will rely on.

18 THE PRESIDENT: If you do not know what
19 they are going to rely on, you do not know what to
20 read to us. I was suggesting to you what you might
21 be relying on, judging from your cross-examination,
22 and I do not want you to read any more than that on
23 which you are going to rely. But you do not know
24 on what you are going to rely; just set out to read
25 the whole of these documents without giving us any

1 assistance.

2 MR. HOWARD: Your Honor, I think the prose-
3 cution is relying on this, and we are contesting
4 what they are relying on; we are taking the other
5 side.

6 Now, I had planned to read the Geneva
7 Prisoner of War Convention, on page 27 -- page 65
8 I should have said; exhibit 15. I do not want to
9 read this if the Court does not want to hear it,
10 naturally; but I am here with it before me and pre-
11 pared to read it, and the defense have asked me to
12 read it. But, of course, I am always subject to the
13 wishes of the Court.

14 THE PRESIDENT: We are inviting you to
15 read what you are relying on, but you said you did
16 not know.

17 MR. HOWARD: Your Honor, there will be
18 parts of this that I will rely on; there will be
19 other parts that some of the other attorneys will
20 rely on. Just which parts they will rely on, I do
21 not know. If the Court would rather hear each indi-
22 vidual accused read in the part that he wants, well,
23 of course, that is what the Court will get.

24 THE PRESIDENT: Read what you intended to
25 read. We will tell you when to stop.

1 MR. HOWARD: "Geneva (Prisoners of War)
2 Convention of 27 July, 1929.

3 "CONVENTION RELATIVE TO THE TREATMENT OF
4 PRISONERS OF WAR.

5 "Article 1.

6 "The present Convention shall apply, without
7 prejudice to the stipulations of Title VII."

8 "Article 2.

9 "Prisoners of war are in the power of the
10 hostile Power, but not of the individuals or corps
11 who have captured them.

12 "They must at all times be humanely treated
13 and protected, particularly against acts of violence,
14 insults and public curiosity.

15 "Measures of reprisal against them are
16 prohibited.

17 "Article 3.

18 "Prisoners of war have the right to have
19 their person and their honor respected. Women shall
20 be treated with all the regard due to their sex.

21 "Prisoners retain their full civil status.

22 "Article 4.

23 "The Power detaining prisoners of war is
24 bound to provide for their maintenance.

25 "Difference in treatment among prisoners

1 is lawful only when it is based on the military rank,
2 state of physical or mental health, professional
3 qualifications or sex of those who profit thereby.

4 "TITLE II. CAPTURE.

5 "Article 5.

6 "Every prisoner of war is bound to give,
7 if he is questioned on the subject, his true name and
8 rank, or else his regimental number.

9 "If he infringes this rule, he is liable
10 to have the advantages given to prisoners of his
11 class curtailed.

12 "No coercion may be used on prisoners to
13 secure information relative to the condition of their
14 army or country. Prisoners who refuse to answer may
15 not be threatened, insulted, or exposed to unpleasant
16 or disadvantageous treatment of any kind whatever.

17 "If, because of his physical or mental con-
18 dition, a prisoner is unable to identify himself, he
19 shall be turned over to the medical corps."

20 THE PRESIDENT: Apparently, you propose to
21 read the whole of the Convention. That is unreason-
22 able, and we refuse to allow it.

23 MR. HOWARD: I then will ask if Mr.
24 Lazarus will be allowed to proceed.

25 THE PRESIDENT: Captain Lazarus.

1 MR. LAZARUS: Mr. President, gentlemen of the
2 Tribunal:

3 I am chairman of the third phase of the
4 defense or the China phase, and every excerpt that I
5 have marked from the documents that are in my hands
6 at the moment I assure the Tribunal I personally will
7 use or will rely upon in my conduct of the defense of
8 the China phase or in my conduct of the defense
9 individually of my client, Field Marshal Shunroku
10 HATA.

11 THE PRESIDENT: We appreciate that attitude,
12 Captain Lazarus, and invite you to proceed as you
13 intend.

14 MR. LAZARUS: Thank you, sir. May I further
15 state, sir, that I am on the committee for several
16 of the other defense phases and I again assure the
17 Tribunal that everything we read we will rely upon
18 in one of those phases or on an individual case.

19 The first document, if the Tribunal please,
20 I refer to is exhibit 17 which is a Convention and
21 Final Protocol on the Suppression of the Abuse of
22 Opium and other Drugs. I will read a few, only, of
23 the articles contained therein. Articles 1, 2, and
24 3 on page 2:
25

"The Contracting Powers shall enact efficacious

1 laws or regulations for the control of the production
2 and distribution of raw opium, unless existing laws or
3 regulations have already regulated the matter.

4 "Article 2. The Contracting Powers, taking
5 into account the differences in their trade conditions,
6 shall limit the number of towns, ports or other places
7 through which the importation or exportation of raw
8 opium shall be permitted.

9 "Article 3. The Contracting Powers shall
10 take measures:

11 "a. to prevent the exportation of raw
12 opium to countries which shall have prohibited the
13 entry thereof, and

14 "b. to control the exportation of raw opium
15 to countries which shall have limited the importation
16 thereof.

17 "Unless existing measures have already
18 regulated the matter."

19 Article 5, top of page 3:

20 "The Contracting Powers shall not permit the
21 importation and exportation of raw opium except through
22 duly authorized persons."

23 Under Chapter II, only Article 6 on page 3:

24 "The Contracting Powers shall take measures
25 for the gradual and efficacious suppression of the

1 manufacture, the internal traffic in and the use of
2 prepared opium in so far as the different conditions
3 peculiar to each nation shall allow of this, unless
4 existing measures have already regulated the matter."

5 Page 4, Article 9:

6 "The Contracting Powers shall enact pharmacy
7 laws and regulations in such a way as to limit the
8 manufacture, the sale and the use of morphine, cocaine
9 and their respective salts to medical and legitimate
10 uses only, unless existing laws or regulations have
11 already regulated the matter. They shall cooperate
12 amongst themselves in order to prevent the use of
13 these drugs for any other purpose."

14 Page 5, the 11th Article:

15 "The Contracting Powers shall take measures
16 to prohibit in their internal commerce all transfer
17 of morphine, cocaine and their respective salts to
18 all nonauthorized persons, unless existing measures
19 have already regulated the matter."

20 Article 13, the first paragraph only:

21 "The Contracting Powers shall use their best
22 efforts to adopt, or cause to be adopted, measures
23 to the end that the exportation of morphine, cocaine
24 and their respective salts from their countries,
25 possessions, colonies and leased territories to the

1 countries, possessions, colonies and leased territories
2 of the other contracting powers shall not take place
3 except in case the persons for whom the drugs are
4 intended shall have received authorizations or permits
5 granted in conformity with the laws or regulations of
6 the importing country."

7 Page 6, Chapter IV, Article 15:

8 "The Contracting Powers having treaties with
9 China (Treaty Powers) shall take, on concert with the
10 Chinese Government, the measures necessary for the
11 prevention of the smuggling, as well with respect to
12 Chinese territory as with respect to their colonies
13 in the Far East and the leased territories which they
14 occupy in China, of raw and prepared opium, morphine,
15 cocaine and their respective salts, as well as of the
16 substances indicated in article 14 of the present
17 Convention. On its side the Chinese Government shall
18 take analogous measures for the suppression of the
19 smuggling of opium and the other substances herein-
20 before indicated, from China to foreign colonies and
21 leased territories."

22 "Article 17: The Contracting Powers having
23 treaties with China shall undertake to adopt the
24 measures necessary for the restraint and control of
25 the opium-smoking habit in their leased territories,

1 'settlements' and concessions in China, for the
2 suppression of pari passu with the Chinese Government
3 of the opium dens or similar establishments which
4 may still exist there, and for the prohibition of the
5 use of opium in houses of amusement and of prostitution."

6 The last article, Article 18:

7 "The Contracting Powers having treaties with
8 China shall take effective measures for the gradual
9 reduction, pari passu with the effective measures which
10 the Chinese Government shall take to the same end, of
11 the number of shops, intended for the sale of raw and
12 prepared opium, which may still exist in their leased
13 territories, settlements and concessions in China.
14 They shall adopt efficacious measures for the restraint
15 and control of the retail trade in opium in the leased
16 territories, settlements and concessions, unless ex-
17 isting measures have already regulated the matter."

18 Exhibit 18, League of Nations Second Opium
19 Conference, 1925. I respectfully point out to the
20 Tribunal that China is not among the nations signing
21 this convention. Page 3, the second and third articles
22 only:

23 "The Contracting Parties undertake to enact
24 laws and regulations to ensure the effective control
25 of the production, distribution and export of raw

1 opium, unless laws and regulations on the subject are
2 already in existence; they also undertake to review
3 periodically, and to strengthen as required, the laws
4 and regulations on the subject which they have enacted
5 in virtue of Article 1 of the Hague Convention of 1912
6 of the present Convention.

7 "Article 13. Due regard being had to the
8 differences in their commercial conditions, the Con-
9 tracting Parties shall limit the number of towns, ports
10 or other localities through which the export or import
11 of raw opium or coca leaves shall be permitted."

12 Page 5, Article 7:

13 "The Contracting Parties shall take measures
14 to prohibit, as regards their internal trade, the
15 delivery to or possession by any unauthorised persons
16 of the substances to which this Chapter applies."

17 Skip to page 14, General Provisions, Article
18 28:

19 "Each of the Contracting Parties agrees that
20 breaches of its laws or regulations by which the pro-
21 visions of the present Convention are enforced shall
22 be punishable by adequate penalties, including in
23 appropriate cases the confiscation of the substances
24 concerned."

25 If the Tribunal please, exhibit 19, the third

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1 and last in a series of narcotic drugs. May I point
2 out at this time to the Tribunal that China did not
3 sign this convention and protocol. Page 19, Article 26;

4 "Any High Contracting Party may, at the time
5 of signature, ratification, or accession, declare
6 that, in accepting the present Convention, he does not
7 assume any obligation in respect of all or any of his
8 colonies, protectorates and overseas territories or
9 territories under suzerainty or mandate, and the
10 present Convention shall not apply to any territories
11 named in such declaration."

12 Top of page 20 -- no, I will skip that. I
13 will go to page 23, if the Tribunal please. It is
14 Protocol of Signature, the very last page, No. II.
15 I will make a short statement on it of one sentence.
16 It is merely a reservation by the Japanese Government
17 that they wish excluded from this agreement stocks in
18 Formosa already held at the time.
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1 If the Tribunal please, exhibit 21. This is
2 the Treaty of Portsmouth between Japan and Russia,
3 5 September 1905.

4 I had intended to read all of it, beginning
5 with Article I, the middle of page 1, if your Honor
6 please, but as I go along I will try to delete articles
7 which I don't deem absolutely essential to the presen-
8 tation of our case.

9 (Reading) "Article II - The Imperial Russian
10 Government, acknowledging that Japan possesses in Korea
11 paramount political, military and economical interests,
12 engage neither to obstruct nor interfere with the
13 measures of guidance, protection and control which the
14 Imperial Government of Japan may find it necessary to
15 take in Korea."

16 Skipping one paragraph:

17 "It is also agreed that, in order to avoid all
18 cause of misunderstanding, the two High Contracting
19 Parties will abstain, on the Russo-Korean frontier,
20 from taking any military measure which may menace the
21 security of Russian or Korean territory."

22 Article III, top of page 2:

23 "Japan and Russia mutually engage:

24 "1. To evacuate completely and simultaneously
25 Manchuria, except the territory affected by the lease

1 of the Liaotung Peninsula, in conformity with the pro-
2 visions of additional Article I, annexed to Treaty; and

3 "2. To restore entirely and completely to
4 the exclusive administration of China all portions of
5 Manchuria now in the occupation or under the control
6 of the Japanese or Russian troops, with the exception
7 of the territory above mentioned.

8 "The Imperial Government of Russia declare
9 that they have not in Manchuria any territorial
10 advantages or preferential or exclusive concessions in
11 impairment of Chinese sovereignty or inconsistent with
12 the principle of equal opportunity.

13 * * * * *

14 "Article V - The Imperial Russian Government
15 transfer and assign to the Imperial Government of Japan,
16 with the consent of the Government of China, the lease
17 of Port Arthur, Talien and adjacent territory and
18 territorial water and all rights, privileges and con-
19 cessions connected with or forming part of such lease
20 and they also transfer and assign to the Imperial
21 Government of Japan all public works and properties
22 in the territory affected by the above-mentioned lease.

23 * * * * *

24 "Article VI - The Imperial Russian Government
25 engage to transfer and assign to the Imperial Government

1 of Japan, without compensation and with the consent of
2 the Chinese Government, the railway between Changchun
3 and Port Arthur and all its branches, together with all
4 rights, privileges and properties appertaining thereto
5 in that region, as well as all coal mines in the said
6 region belonging to or worked for the benefit of the
7 railway.

8 * * * * *

9 "Article VII - Japan and Russia engaged to
10 exploit their respective railways in Manchuria exclu-
11 sively for commercial and industrial purposes and in
12 no wise for strategic purposes.

13 * * * * *

14 "Article IX - The Imperial Russian Government
15 cede to the Imperial Government of Japan in perpetuity
16 and full sovereignty the southern portion of the Island
17 of Saghalien and all islands adjacent thereto, and all
18 public works and properties thereon.

19 * * * * *

20 "Article XI - Russia engages to arrange with
21 Japan for granting to Japanese subjects rights of
22 fishery along the coasts of the Russian possessions in
23 the Japan, Okhotsk and Behring Seas.

24 * * * * *

25 "Article XII - The Treaty of Commerce and

1 Navigation between Japan and Russia having been
2 annulled by the war, the Imperial Governments of Japan
3 and Russia engage to adopt as the basis of their com-
4 mercial relations, pending the conclusion of a new
5 treaty of commerce and navigation on the basis of the
6 Treaty which was in force previous to the present war,
7 the system of reciprocal treatment on the footing of
8 the most favored nation, in which are included import
9 and export duties, customs formalities, transit and
10 tonnage dues, and the admission and treatment of the
11 agents, subjects and vessels of one country in the
12 territories of the other."

13 I skip the rest of that.

14 This concludes our excerpts from that treaty,
15 if the Tribunal please.
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1 THE PRESIDENT: Mr. Lazarus, for the benefit
2 of one of the members of the bench, will you say just
3 how you propose to rely on the conventions dealing with
4 opium and narcotics and on this Russo-Japanese agree-
5 ment?

6 MR. LAZARUS: Yes, Mr. President. There
7 are witnesses, documents and books which will be pro-
8 duced before this Tribunal that Japan did not, as
9 charged by the prosecution, use opium in China for
10 the two purposes that they have enumerated, namely,
11 the raising of funds for the carrying on of the war,
12 and, secondly, the debauching of the Chinese people.

13 These treaties are against the abuse of opium,
14 and they, by their terms and by the articles we read,
15 allow the use of opium for medicinal purposes. The
16 witnesses and the documents and oral statements will
17 prove that Japan did not violate these conventions,
18 and that is why we wanted these certain articles before
19 this Tribunal so that they may be referred to, or even
20 if they are not referred to by the witnesses themselves
21 the Tribunal will know what they are talking about.
22 It is the position of the defense that Japan did not
23 violate her treaties; that she worked within the frame-
24 work of those treaties, and that is where our evidence
25 will be adduced.

1 This Russian agreement which I have just
2 read is one of a series which will show what was the
3 relative position of the two parties at the time when
4 the series of engagements which have been referred to
5 as aggressive war by the prosecution took place. We
6 will show what their positions and treaty rights were
7 vis-a-vis, and vis-a-vis China also. Therefore, Mr.
8 President, this Russian one is only the first in a
9 series to bring the Court up to date to show what
10 the position and the rights and the relative merits
11 were of the positions taken by each side to the argu-
12 ment.

13 I assure you again that I will read nothing
14 at this time, or with the next documents that I will
15 introduce, that I am not prepared to use myself, or
16 which I know definitely one of the other phases or
17 one of the other individual cases will use.

18 THE PRESIDENT: We will recess for fifteen
19 minutes.

20 (Whereupon, at 1445 a recess was
21 taken until 1500, after which the proceedings
22 were resumed as follows:)
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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Mr. Yamaoka.

4 MR. YAMAOKA: If the Tribunal please, we
5 desire next to refer to prosecution exhibit 24. This
6 is one of the series of Washington treaties for 1921,
7 December 13, 1921, to be exact, and includes, among
8 other things, a reference to the termination of the
9 Anglo-Japanese Alliance.

10 I read from page 3, Article I:

11 "The High Contracting Parties agree as be-
12 tween themselves to respect their rights in relation
13 to their insular possessions and insular dominions
14 in the region of the Pacific Ocean.

15 "If there should develop between any of the
16 High Contracting Parties a controversy arising out of
17 any Pacific question and involving their said rights
18 which is not satisfactorily settled by diplomacy
19 and is likely to affect the harmonious accord now
20 happily subsisting between them, they shall invite
21 the other High Contracting Parties to a joint con-
22 ference to which the whole subject will be referred
23 for consideration and adjustment.

24 "II.

25 "If the said rights are threatened by the

1 aggressive action of any other Power, the High Con-
2 tracting Parties shall communicate with one another
3 fully and frankly in order to arrive at an under-
4 standing as to the most efficient measures to be
5 taken, jointly or separately, to meet the exigencies
6 of the particular situation.

7 "III.

8 "This Treaty shall remain in force for ten
9 years from the time it shall take effect, and after
10 the expiration of said period it shall continue to
11 be in force subject to the right of any of the High
12 Contracting Parties to terminate it upon twelve
13 months' notice.

14 "IV.

15 "This Treaty shall be ratified as soon as
16 possible in accordance with the constitutional
17 methods of the High Contracting Parties and shall
18 take effect on the deposit of ratifications, which
19 shall take place at Washington, and thereupon the
20 agreement between Great Britain and Japan, which was
21 concluded at London on July 13, 1911, shall terminate.
22 The Government of the United States will transmit to
23 all the Signatory Powers a certified copy of the
24 proces-verbal of the deposit of ratifications."
25

We next refer to prosecution exhibit 26. I

1 will read from the exhibit.

2 "DECLARATION OF JAPAN REGARDING HER RESOLU-
3 TION OF RESPECTING RIGHTS OF NETHERLANDS IN RELATION
4 TO HER INSULAR POSSESSIONS IN REGION OF PACIFIC OCEAN.

5 "Dated February 5, 1921.

6 "Japan has concluded on December 13, 1921,
7 with the United States of America, the British Em-
8 pire and France a treaty with a view to the preserva-
9 tion of the general peace and the maintenance of
10 their rights in relation to their insular possessions
11 and insular dominions in the region of the Pacific
12 Ocean. They have agreed thereby as between them-
13 selves to respect their rights in relation to these
14 possessions and dominions.

15 "The Netherlands not being a signatory of
16 the said treaty and the Netherlands possessions in
17 the region of the Pacific Ocean therefore not being
18 included in the agreement referred to, the Government
19 of Japan, anxious to forestall any conclusion con-
20 trary to the spirit of the treaty, desires to declare
21 that it is firmly resolved to respect the rights of
22 the Netherlands in relation to her insular possessions
23 in the region of the Pacific Ocean."

24 We next refer to prosecution exhibit 27,
25 published August 17, 1923, "DECLARATION OF JAPAN

1 REGARDING HER RESOLUTION OF RESPECTING RIGHTS OF
2 PORTUGAL IN RELATION TO HER INSULAR POSSESSIONS IN
3 REGION OF PACIFIC OCEAN."

4 THE PRESIDENT: Well, you need not read that
5 one, Mr. Yamaoka. It is the same as the Netherland's
6 Declaration.

7 MR. YAMAOKA: Yes, your Honor, it is, except
8 that we did desire, if your Honor please, to invite
9 the Tribunal's attention to it since I think the
10 question of the invasion of Timor is involved.
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1 We next invite the Tribunal's attention
2 to prosecution's exhibit 28, being the Nine-Power
3 Treaty of February 6, 1922. As the Tribunal is
4 aware, this is one of the important basic treaties
5 with which the accused are charged of violating. It
6 is rather short and with the Tribunal's permission
7 I should like to read the first eight articles.

8 (Reading): "Article I.

9 "The Contracting Powers, other than China,
10 agree:

11 "(1) To respect the sovereignty, the
12 independence, and the territorial and administrative
13 integrity of China;

14 "(2) To provide the fullest and most
15 unembarrassed opportunity to China to develop and
16 maintain for herself an effective and stable govern-
17 ment;

18 "(3) To use their influence for the
19 purpose of effectually establishing and maintaining
20 the principle of equal opportunity for the commerce
21 and industry of all nations throughout the territory
22 of China;

23 "(4) To refrain from taking advantage of
24 conditions in China in order to seek special rights
25 or privileges which would abridge the rights of subjects

1 or citizens of friendly States, and from countenancing
2 action inimical to the security of such States.

3 "Article II"--

4 THE PRESIDENT: You need not read II, surely.

5 MR. YAMAOKA: (Reading) "Article III.

6 "With a view to applying more effectually
7 the principles of the Open Door or equality of oppor-
8 tunity in China for the trade and industry of all
9 nations, the Contracting Powers, other than China,
10 agree that they will not seek, nor support their
11 respective nationals in seeking--

12 "(a) any arrangement which might purport
13 to establish in favor of their interests any general
14 superiority of rights with respect to commercial or
15 economic development in any designated region of
16 China;

17
18 "(b) any such monopoly or preference as
19 would deprive the nationals of any other Power of
20 the right of undertaking any legitimate trade or
21 industry in China, or of participating with the
22 Chinese Government, or with any local authority, in
23 any category or public enterprise, or which by reason
24 of its scope, duration or geographical extent is
25 calculated to frustrate the practical application of
the principle of equal opportunity.

1 "It is understood that the foregoing
2 stipulations of this Article are not to be so con-
3 strued as to prohibit the acquisition of such proper-
4 ties or rights as may be necessary to the conduct
5 of a particular commercial, industrial, or financial
6 undertaking or to the encouragement of invention and
7 research.

8 "China undertakes to be guided by the
9 principles stated in the foregoing stipulations of
10 this Article in dealing with applications for economic
11 rights and privileges from Governments and nationals
12 of all foreign countries, whether parties to the
13 present Treaty or not.

14 "Article IV.

15 "The Contracting Powers agree not to support
16 any agreements by their respective nationals with
17 each other designed to create Spheres of Influence
18 or to provide for the enjoyment of mutually exclusive
19 opportunities in designated parts of Chinese territory.

20 "Article V.

21 "China agrees that, throughout the whole of
22 the railways in China, she will not exercise or permit
23 unfair discrimination of any kind. In particular
24 there shall be no discrimination whatever, direct or
25 indirect, in respect of charges or of facilities on

1 the ground of the nationality of passengers or the
2 countries from which or to which they are proceeding,
3 or the origin or ownership of goods or the country
4 from which or to which they are consigned, or the
5 nationality or ownership of the ship or other means
6 of conveying such passengers or goods before or after
7 their transport on the Chinese Railways.

8 "The Contracting Powers, other than China,
9 assume a corresponding obligation in respect of any
10 of the aforesaid railways over which they or their
11 nationals are in a position to exercise any control
12 in virtue of any concession, special agreement or
13 otherwise.

14 "Article VI.

15 "The Contracting Powers, other than China,
16 agree fully to respect China's rights as a neutral
17 in time of war to which China is not a party; and
18 China declares that when she is a neutral she will
19 observe the obligations of neutrality.

20 "Article VII.

21 "The Contracting Powers agree that, whenever
22 a situation arises which in the opinion of any one
23 of them involves the application of the stipulations
24 of the present Treaty, and renders desirable discus-
25 sion of such application, there shall be full and

1 frank communication between the Contracting Powers
2 concerned.

3 "Article VIII.

4 "Powers not signatory to the present Treaty,
5 which have Governments recognized by the Signatory
6 Powers and which have treaty relations with China,
7 shall be invited to adhere to the present Treaty. To
8 this end the Government of the United States will
9 make the necessary communications to nonsignatory
10 Powers and will inform the Contracting Powers of
11 the replies received. Adherence by any Power shall
12 become effective on receipt of notice thereof by the
13 Government of the United States."

14 We next desire to invite the Tribunal's
15 attention to prosecution's exhibit 29, page 2, the
16 third paragraph and the following paragraphs:

17 "Article 4. The military training of the
18 natives, otherwise than for purposes of internal
19 police and the local defense of the territory, shall
20 be prohibited. Furthermore, no military or naval
21 bases shall be established or fortifications erected
22 in the territory."

23 Skipping Article 5, to Article 6:

24 "Article 6. The Mandatory shall make to
25 the Council of the League of Nations an annual report

1 to the satisfaction of the Council, containing full
2 information with regard to the territory, and in-
3 dicating the measures taken to carry out the obligations
4 assumed under Articles 2, 3, 4, and 5."

5 I might mention, if the Tribunal please,
6 that although we are reading and inviting the
7 Tribunal's attention to only certain excerpts, it
8 is not the intention of the defense to be restricted
9 only to these excerpts, and we do rely on such other
10 portions thereof that may become pertinent to the
11 case in the course of the development of the evidence.

12 THE PRESIDENT: Are you having any difficulty
13 with the processing of your documents?

14 MR. YAMAOKA: If the Tribunal please, that
15 is a problem that is plaguing us.

16 THE PRESIDENT: Mr. Smith.

17 MR. SMITH: If your Honor please, we anticipate
18 all sorts of difficulty. We don't have enough type-
19 writers; we don't have enough stenographers; and it
20 is still a problem how much assistance we are going
21 to get from the prosecution. For example, last week
22 we were able to borrow four typewriters from the
23 prosecution. Yesterday they sent for them to get them
24 back. Nearly all the counsel in the case are working
25 until late hours in the night, setting up documents

1 and trying to get the matter organized; and it will
2 be by grace if there is no breakdown.

3 Of course, I didn't want to give the impres-
4 sion that what counsel is reading today is merely
5 stalling for time. We are trying to put in the
6 foundation for what is to come later.

7 MR. YAMAOKA: If the Tribunal please, after
8 the reading of these prosecution exhibits, we intended
9 to introduce into evidence about sixty-three or sixty-
10 five of our own exhibits, all of which, fortunately,
11 are ready.

12 May I now invite the Tribunal's attention
13 to prosecution's exhibit 34, which is the treaty
14 between the United States, the British Empire, France,
15 Italy and Japan on the limitation of naval armaments,
16 signed at Washington on September 6, 1922. As I
17 stated before, we intend to rely on all of the pro-
18 visions of this treaty but invite particular attention
19 of the Tribunal to Article 28 on page 5, which reads
20 as follows:

21 THE MONITOR: Mr. Yamaoka, we do not have
22 the Japanese translation of the articles. We only
23 have the introductory remark. If you will read
24 whatever article you are reading, we may be able to
25 do it on relay.

MR. YAMAOKA: I am sorry; I meant "18."

1 THE MONITOR: We don't have any articles.
2 We just have the first page translated here. If you
3 will read article 18 and give us the time, I think
4 we can do it over the relay system.

5 MR. YAMAOKA: (Reading) "Article XVIII.

6 "Each of the Contracting Powers undertakes
7 not to dispose by gift, sale or any mode of transfer
8 of any vessel of war in such a manner that such
9 vessel may become a vessel of war in the Navy of
10 any foreign Power.
11

12 "Article XIX.

13 "The United States, the British Empire and
14 Japan agree that the status quo at the time of the
15 signing of the present Treaty, with regard to forti-
16 fications and naval bases, shall be maintained in
17 their respective territories and possessions specified
18 hereunder:"--

19 I shall omit the reading of paragraphs
20 numbered (1), (2) and (3) on page 5 and continue
21 from the top of page 6:

22 "The maintenance of the status quo under
23 the foregoing provisions implies that no new forti-
24 fications or naval bases shall be established in the
25 territories and possessions specified; that no measures

1 shall be taken to increase the existing naval facilities
2 for the repair and maintenance of naval forces, and
3 that no increase shall be made in the coast defenses
4 of the territories and possessions above specified.
5 This restriction, however, does not preclude such
6 repair and replacement of worn-out weapons and equip-
7 ment as is customary in naval and military establish-
8 ments in time of peace."

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1 MR. YAMAOKA: I next desire to invite the
2 Tribunal's attention to the section entitled
3 "Replacement," on pages 10 and 11. I shall not,
4 however, read these sections. I shall continue read-
5 ing from Chapter III on page 12, Article XXI.

6 (Reading) "If during the term of the present
7 Treaty the requirements of the national security of
8 any Contracting Power in respect of naval defence
9 are, in the opinion of that Power, materially affec-
10 ted by any change of circumstances, the Contracting
11 Powers will, at the request of such Power, meet in
12 conference with a view to the reconsideration of the
13 provisions of the Treaty and its amendment by mutual
14 agreement.

15 "In view of possible technical and scientific
16 developments, the United States, after consultation
17 with the other Contracting Powers shall arrange for
18 a conference of all the Contracting Powers which shall
19 convene as soon as possible after the expiration of
20 eight years from the coming into force of the present
21 Treaty to consider what changes, if any, in the Treaty
22 may be necessary to meet such developments.

23 "Article XXII.
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1 "Whenever any Contracting Power shall become
2 engaged in a war which in its opinion affects the naval
3 defence of its national security, such Power may after
4 notice to the other Contracting Powers suspend for
5 the period of hostilities its obligations under the
6 present Treaty other than those under Articles XIII
7 and XVII, provided that such Power shall notify the
8 other Contracting Powers that the emergency is of
9 such a character as to require such suspension.

10 "The remaining Contracting Powers shall in
11 such case consult together with a view to agreement
12 as to what temporary modifications, if any, should
13 be made in the Treaty as between themselves. Should
14 such consultation not produce agreement, duly made
15 in accordance with the constitutional methods of the
16 respective Powers, any one of said Contracting Powers
17 may, by giving notice to the other Contracting Powers,
18 suspend for the period of hostilities its obligations
19 under the present Treaty, other than those under
20 Articles XIII and XVII.

21 "On the cessation of hostilities the Contract-
22 ing Powers will meet in conference to consider what
23 modifications, if any, should be made in the pro-
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1 visions of the present Treaty.

2 "Article XXIII.

3 "The present Treaty shall remain in force
4 until December 31st, 1936, and in case none of the
5 Contracting Powers shall have given notice two years
6 before that date of its intention to terminate the
7 Treaty, it shall continue in force until the expira-
8 tion of two years from the date on which notice of
9 termination shall be given by one of the Contracting
10 Powers, whereupon the Treaty shall terminate as
11 regards all the Contracting Powers."

12 I next desire to invite the Tribunal's
13 attention to Prosecution exhibit number 35, being the
14 London Naval Treaty of April 22, 1930. I shall read
15 from Article XXI, on page 20.

16 "Article 21.

17 "If, during the term of the present Treaty,
18 the requirements of the national security of any High
19 Contracting Party in respect of vessels of war limi-
20 ted by Part III of the present Treaty are in the
21 opinion of that Party materially affected by new con-
22 struction of any Power other than those who have been
23 joined in Part III of this Treaty, that High Contract-
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1 ing Party will notify the other Parties to Part III
2 as to the increase required to be made in its own
3 tonnage within one or more of the categories of such
4 vessels of war, specifying particularly the proposed
5 increases and the reason therefor, and shall be en-
6 titled to make such increase. Thereupon the other
7 Parties to Part III of this Treaty shall be entitled
8 to make a proportionate increase in the category or
9 categories specified; and the said other Parties shall
10 promptly advise with each other through diplomatic
11 channels as to the situation thus presented.

12 "PART IV.

13 "ARTICLE 22.

14 "The following are accepted as established
15 rules of International Law:

16 "(1) In their action with regard to merchant
17 ships, submarines must conform to the rules of Inter-
18 national Law to which surface vessels are subject.

19 "(2) In particular, except in the case of
20 persistent refusal to stop on being duly summoned,
21 or of active resistance to visit or search, a warship,
22 whether surface vessel or submarine, may not sink
23 or render incapable of navigation a merchant vessel
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1 without having first placed passengers, crew and
2 ship's papers in a place of safety. For this pur-
3 pose the ship's boats are not regarded as a place
4 of safety unless the safety of the passengers and
5 crew is assured, in the existing sea and weather
6 conditions, by the proximity of land, or the pres-
7 ence of another vessel which is in a position to take
8 them on board.

9 "The High Contracting Parties invite all
10 other Powers to express their assent to the above
11 rules.

12 "PART V.

13 "ARTICLE 23.

14 "The present Treaty shall remain in force
15 until the 31st December, 1936, subject to the follow-
16 ing exceptions:

17 "(1) Part IV shall remain in force without
18 limit of time;

19 "(2) the provisions of Articles 3, 4 and 5,
20 and of Article 11 and Annex II to Part II so far as
21 they relate to aircraft carriers shall remain in
22 force for the same period as the Washington Treaty.

23 "Unless the High Contracting Parties should
24
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1 agree otherwise by reason of a more general agreement
2 limiting naval armaments, to which they all become
3 parties, they shall meet in conference in 1935 to
4 frame a new treaty to replace and to carry out the
5 purposes of the present Treaty, it being understood
6 that none of the provisions of the present Treaty
7 shall prejudice the attitude of any of the High Con-
8 tracting Parties at the conference agreed to."

9 With the Tribunal's permission Mr. Collins
10 Howard will continue.
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1 THE PRESIDENT: Mr. Howard.

2 MR. HOWARD: Mr. President and Members of
3 the Tribunal, I would like now to read from exhibit
4 32 which is a Treaty Between the United States and
5 Other Powers Providing for the Renunciation of War
6 as an Instrument of National Policy which was signed
7 at Paris, August 27, 1928. I would like to read
8 Articles I, II and III on page 4.

9 THE PRESIDENT: I can assure you we are
10 all thoroughly familiar with this. Most of us
11 could recite it, all of it, perhaps, the Pact of
12 Paris.

13 MR. HOWARD: We have on the list as next
14 exhibit 33, but we shall omit that.

15
16 Next we have exhibit 31, the Convention
17 Embodying Basic Rules of the Relations Between Japan
18 and the Union of Soviet Socialist Republics, signed
19 at Peking, January 20, 1925. I should like to read
20 Article II, Article IV, Article V and Article VI.

21 (Reading) "Article II. The Union of Soviet
22 Socialist Republics agrees that the Treaty of September
23 5th, 1905, shall remain in full force.

24 "It is agreed that the Treaties, Conventions
25 and Agreements, other than the said Treaty of Ports-
mouth, which were concluded between Japan and Russia

1 prior to November 7, 1917, shall be re-examined at a
2 Conference to be subsequently held between the
3 Governments of the High Contracting Parties and are
4 liable to revision or annulment as altered circum-
5 stances may require.

6 "Article IV. The Governments of the High
7 Contracting Parties agree that upon the coming into
8 force of the present Convention, they shall proceed
9 to the conclusion of a treaty of commerce and navi-
10 gation in conformity with the principles hereunder
11 mentioned, and that pending the conclusion of such
12 a treaty, the general intercourse between the two
13 countries shall be regulated by those principles.

14 "(1) The subjects or citizens of each of the
15 High Contracting Parties shall in accordance with
16 the laws of the country: (a) have liberty to enter,
17 travel and reside in the territories of the other,
18 and (b) enjoy constant and complete protection for
19 the safety of their lives and property.

20
21 "(2) Each of the High Contracting Parties
22 shall in accordance with the laws of the country
23 accord in its territories to the subjects or citizens
24 of the other, to the widest possible extent and on
25 condition of reciprocity, the right of private owner-
ship and the liberty to engage in commerce, navigation,

1 industries, and other peaceful pursuits.

2 "(3) Without prejudice to the right of
3 each Contracting Party to regulate by its own laws
4 the system of international trade in that country,
5 it is understood that neither Contracting Party shall
6 apply in discrimination against the other party any
7 measures of prohibition, restriction or impost which
8 may serve to hamper the growth of the intercourse,
9 economic or otherwise, between the two countries,
10 it being the intention of both Parties to place the
11 commerce, navigation and industry of each country,
12 as far as possible, on the footing of the most
13 favoured nation.

14 "The Governments of the High Contracting
15 Parties further agree that they shall enter into
16 negotiations, from time to time as circumstances may
17 require, for the conclusion of special arrangements
18 relative to commerce and navigation to adjust and
19 to promote economic relations between the two
20 countries.

21 "Article V. The High Contracting Parties
22 solemnly affirm their desire and intention to live
23 in peace and amity with each other, scrupulously to
24 respect the undoubted right of a State to order its
25 own life within its own jurisdiction in its own way,

1 to refrain and restrain all persons in any governmental
2 service for them, and all organizations in receipt
3 of any financial assistance from them, from any act
4 overt or covert liable in any way whatever to endanger
5 the order and security in any part of the territories
6 of Japan or the Union of Soviet Socialist Republics.

7 "It is further agreed that neither Contracting
8 Party shall permit the presence in the territories under
9 its jurisdiction -- (a) of organizations or groups
10 pretending to be the Government for any part of
11 the territories of the other Party, or (b) of
12 alien subjects or citizens who may be found to be
13 actually carrying on political activities for such
14 organizations or groups.

15 "Article VI. In the interest of promoting
16 economic relations between the two countries, and
17 taking into consideration the needs of Japan with
18 regard to natural resources, the Government of the
19 Union of Soviet Socialist Republics is willing to
20 grant to Japanese subjects, companies and associations
21 concessions for the exploitation of minerals, forest
22 and other natural resources in all the territories of
23 the Union of Soviet Socialist Republics."

24 THE PRESIDENT: Why do you rely on that docu-
25 ment, Mr. Howard?

1 MR. HOWARD: This is the document since 1925
2 through which Japan and Russia, or the Soviet Socialist
3 Republics, have been doing business.

4 THE PRESIDENT: Well, how does it meet the
5 charges in the Indictment in respect of the Soviets?

6 MR. HOWARD: The prosecution offered it in
7 evidence, your Honor, and we have to contest it.

8 THE PRESIDENT: But you are relying on it,
9 you see. They relied on it, and now you do.

10 MR. HOWARD: We are using this document
11 to show that Japan complied with it and that Japan
12 acted within the terms of this.

13 I would like now to read Article III which
14 I omitted in the first reading.

15 (Reading) "Article III. The Governments
16 of the High Contracting Parties agree that upon the
17 coming into force of the present Convention, they
18 shall proceed to the revision of the Fishery Con-
19 vention of 1907, taking into consideration such
20 changes as may have taken place in the general con-
21 ditions since the conclusion of the said Fishery
22 Convention.

23 "Pending the conclusion of a convention so
24 revised, the Government of the Union of Soviet Socialist
25 Republics shall maintain the practices established in

1 1924 relating to the lease of fishery lots to
2 Japanese subjects."

3 Exhibit 36, the Pact Against the Communist
4 International. I should like to read Articles 1
5 and 2.

6 (Reading) "Article 1. The contracting
7 parties agree to inform each other of the Communist
8 International's activities, to discuss necessary
9 measures for defense and promise to fulfill such
10 measures through close cooperation.

11 "Article 2. The contracting parties will
12 jointly invite a third nation, whose internal peace
13 is menaced by destructive activities of the Communist
14 International, to take defense measures in the spirit
15 of this pact, or to participate in the pact."

16 Page 2, second paragraph, this is an
17 Accessory Protocol to the Pact Against the Communist
18 International.

19 (Reading) "(a) The authorities of the two
20 contracting parties will closely cooperate with each
21 other as regards the exchange of information relating
22 to the activities of the Communist International and
23 the enlightenment and defense measures against the
24 Communist International.
25

 "(b) The authorities of the two contracting

1 parties will take drastic steps, within the bounds
2 of the existing law, in dealing with persons who,
3 at home or abroad, directly or indirectly, are
4 serving with the Communist International or foster
5 its destructive activity.

6 "(c) In order to facilitate the cooperation
7 of the authorities of the two contracting parties,
8 as provided in forementioned (a), a standing com-
9 mission will be established. Other defense measures
10 necessary for checking the destructive activities
11 of the Communist International will be studied and
12 discussed by the said commission."
13

14 Page 3, Article I.

15 (Reading) "Italy participates in the Treaty
16 and its attribute protocol against the Communist
17 International, which has been concluded between
18 Japan and Germany on 25 November 1936. The texts
19 of the said Pact and accessory protocol are attached
20 as appendices of this protocol.

21 "Article II."

22 THE PRESIDENT: Well, you need not read
23 Article II. We will adjourn until half-past nine
24 tomorrow morning.

25 (Whereupon, at 1600, an adjournment was
taken until Wednesday, 26 February 1947, at 0930.)

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